

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

- - - - -X  
U.S. Bank N.A., as : 17-cv-00394-WES  
Trustee for the :  
Registered Holders of the :  
Structured Asset :  
Securities Corporation, :  
Structured Asset :  
Investment Loan Trust, :  
Mortgage Pass-Through :  
Certificates, Series : United States Courthouse  
2003-BC11, : Providence, Rhode Island  
Plaintiff, :  
 :  
 : Tuesday, April 5, 2022  
 :  
vs. :  
 :  
 :  
 :  
 :  
MASOUD SHAKOORI-NAMINY, :  
et al., :  
Defendants. :  
- - - - -X

TRANSCRIPT OF CIVIL CAUSE FOR A BENCH TRIAL  
BEFORE THE HONORABLE WILLIAM E. SMITH  
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

For the Plaintiff: SAMUEL C. BODURTHA, ESQ.  
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Providence, RI 02903

For the Defendants: JOHN B. ENNIS, ESQ.  
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Court Reporter: Lisa Schwam, CRR-RPR-RMR  
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1 (In open court)

2 05 APRIL 2022

3 THE COURT: All right. Good morning, everyone.  
4 We're here in the matter of U.S. Bank, N.A., as Trustee  
5 vs. Masoud Shakoori-Naminy, et al. We're here today to  
6 begin the bench trial in this matter. So let's have  
7 counsel identify themselves for the record, please.

8 MR. BODURTHA: Good morning, your Honor. Sam  
9 Bodurtha on behalf of U.S. Bank, N.A., as Trustee.

10 MR. ENNIS: John Ennis on behalf of Mr.  
11 Shakoori.

12 THE COURT: Okay. Thank you.

13 So as I've previously discussed with counsel,  
14 we're going to begin the bench trial today. I'm going  
15 to hear testimony, as I understand it, from a single  
16 witness. I've received your pretrial filings, and I  
17 think we're ready to go forward. My understanding is  
18 everyone has tested negative, so the protocol that  
19 we're going to follow is that you'll be able to remove  
20 your mask when you're speaking. So that means if  
21 you're examining the witness or you're on the witness  
22 stand, you can take your mask off, but otherwise, we'll  
23 keep our masks on unless we're speaking, okay.

24 So do you wish to give any opening statements?

25 MR. BODURTHA: Yes, your Honor.

1 THE COURT: Okay.

2 MR. BODURTHA: Good morning again, your Honor.  
3 My name is Sam Bodurtha. I represent the plaintiff,  
4 U.S. Bank, N.A., as Trustee. The purpose of this  
5 lawsuit is to obtain relief from this Court in the form  
6 of an equitable assignment of mortgage so that U.S.  
7 Bank, as Trustee can pursue foreclosure on a mortgage  
8 loan in default since 2011. Equitable relief rests  
9 within the sound discretion of this Court, and this  
10 Court's determination of whether U.S. Bank, as Trustee  
11 is entitled to an equitable assignment of mortgage  
12 should be guided by the principles of equity and  
13 justice, should balance the equities, weighing the  
14 hardships to either side, and relief should be granted  
15 only in the absence of an adequate legal remedy.

16 The evidence of this case will demonstrate that  
17 the defendant, Masoud Shakoory-Naminy, obtained a  
18 mortgage loan from Option One Mortgage Corporation in  
19 July of 2003; that Mr. Shakoory defaulted on that  
20 mortgage loan by failing to make regular monthly  
21 payments on numerous occasions; and that Mr. Shakoory  
22 has remained in default on that loan since April of  
23 2011.

24 The evidence in this case will also demonstrate  
25 that the loan Mr. Shakoory originated with Option One

1 has since then been sold and deposited into a trust,  
2 specifically the Structured Asset Investment Loan  
3 Trust, Mortgage Pass-Through Certificates, Series  
4 2003-BC11. And the evidence will also demonstrate that  
5 U.S. Bank is the current trustee of that trust.  
6 Applying the evidence demonstrating that U.S. Bank, as  
7 Trustee is the current holder of the mortgage loan to  
8 Rhode Island law and the law of this circuit, U.S.  
9 Bank, as Trustee is entitled to an equitable  
10 assignment.

11 Now, our intention in this case is to run  
12 through three separate layers of evidence in order to  
13 prove up our claim. It is anticipated today that Mr.  
14 Shakoory will provide the following testimony: That he  
15 purchased property located at 1541 Ten Rod Road in  
16 Exeter, Rhode Island, in late 2000, early 2001; that he  
17 has continued to reside at that property to the present  
18 day.

19 It is also anticipated that Mr. Shakoory will  
20 confirm through his testimony that he obtained a loan  
21 from Finance America in November of 2001 for \$243,750  
22 and that that loan was secured by a first mortgage on  
23 the Ten Rod Road property. It is also anticipated that  
24 Mr. Shakoory will testify that he refinanced the  
25 Finance America loan in July of 2003 with a new loan

1 from Option One Mortgage Corporation in the amount of  
2 \$315,400 and that that loan was secured by a first  
3 mortgage on the property causing the Finance America  
4 mortgage loan to be discharged.

5 It is also anticipated that Mr. Shakoori will  
6 testify that he defaulted on the mortgage that he  
7 obtained from Option One in 2008 and that in order to  
8 resolve that default, he entered into a loan  
9 modification agreement with American Home Mortgage  
10 Servicing, Inc., a loan servicer and on behalf of the  
11 noteholder. It is also anticipated that Mr. Shakoori  
12 will testify that through that 2008 loan modification,  
13 he agreed to a new principal balance of \$320,760.58;  
14 that he agreed to make regular monthly mortgage  
15 payments of \$1,336.50 between January 1, 2009, and  
16 December 1, 2013; that those payments were for interest  
17 alone, interest only, and that he stopped making those  
18 interest-only payments on the modified mortgage loan at  
19 some point in 2011, specifically in April.

20 I want to make this clear. There's going to be  
21 no evidentiary dispute that Mr. Shakoori originated a  
22 mortgage loan in July of 2003 with Option One; that he  
23 defaulted on the mortgage loan and that he has not made  
24 a mortgage loan payment in more than ten years. It is  
25 also anticipated that Mr. Shakoori will testify that he

1 filed two bankruptcy petitions following default on the  
2 mortgage loan in 2011 in the United States Bankruptcy  
3 Court for the District of Rhode Island. Mr. Shakoori  
4 signed each of these bankruptcy petitions under the  
5 pains and penalties of perjury and represented to the  
6 bankruptcy court that all schedules provided were true  
7 and correct to the best of his knowledge and  
8 information.

9 In reviewing those bankruptcy petitions, it is  
10 anticipated that Mr. Shakoori's testimony will confirm  
11 that in a 2012 bank petition he filed, he included a  
12 Schedule D, Creditors Holding Secured Claims, which  
13 identified the Option One mortgage under creditor  
14 number one. Under creditor number one, he listed the  
15 creditor as American, and in parentheses, LaSalle Bank  
16 N.A., close parentheses. Under creditor number one, he  
17 also described the creditor's claim as a first mortgage  
18 that he opened on July 1, 2003, on his primary  
19 residence located at 1541 Ten Rod Road, Exeter, Rhode  
20 Island. And under that creditor claim, he listed the  
21 amount at \$320,760, identical to the amount he listed  
22 in the 2008 loan modification agreement.

23 The evidence in this case will also show that  
24 Mr. Shakoori, through his counsel, entered into loss  
25 mitigation negotiations in the 2012 bankruptcy petition

1 with his creditor identified as the mortgage holder  
2 LaSalle Bank National Association, as Trustee for the  
3 Structured Asset Securities Corporation, Structured  
4 Asset Investment Loan Trust, Mortgage Pass-Through  
5 Certificates, Series 2003-BC11.

6 The evidence in this case will further show that  
7 Mr. Shakoori's counsel filed a subsequent Chapter 7  
8 petition in the United States Bankruptcy Court in April  
9 of 2015. In that bankruptcy petition, Mr. Shakoori  
10 again filed a Schedule D, Creditors Holding Secured  
11 Claims, and once again, Mr. Shakoori identified the  
12 Option One mortgage under creditor number one.

13 In the 2015 Schedule D, he listed as creditor  
14 number one Ocwen Mortgage Co. He described the claim,  
15 similarly to 2012, as a first mortgage opened on July  
16 1, 2003, on his primary residence located at 1541 Ten  
17 Rod Road, Exeter, Rhode Island. And he also included  
18 the amount of the claim at \$320,760, identical to the  
19 2008 modification agreement, identical to the 2012  
20 bankruptcy petition.

21 The evidence in this case will also show that in  
22 that 2015 bankruptcy, Mr. Shakoori received an order of  
23 discharge from the court on December 31, 2015. That  
24 discharge prohibited and prohibits any creditor from  
25 attempting to collect a discharged debt against Mr.

1       Shakoori. At the same time, that discharge order  
2       allowed a creditor with a lien to enforce the claim  
3       against Mr. Shakoori's property.

4               The evidence will show that Mr. Shakoori,  
5       following the 2015 discharge, is relieved of all  
6       personal liability on the mortgage loan he originated  
7       with Option One. At the same time, Mr. Shakoori still  
8       has not made any mortgage loan payments since April of  
9       2011 so that the creditor who holds his mortgage is  
10      entitled to foreclose on the Ten Rod Road property.

11              What is the significance of Mr. Shakoori's  
12      anticipated testimony and the associated exhibits?  
13      Well, it is as follows: The evidence will demonstrate  
14      that Mr. Shakoori himself, over the course of nearly 15  
15      years, has acknowledged and admitted by his own conduct  
16      several dispositive facts. Number one, that Structured  
17      Asset Securities Corporation, Structured Asset  
18      Investment Loan Trust, Mortgage Pass-Through  
19      Certificates, Series 2003-BC11 is the holder of the  
20      mortgage loan he originated with Option One in July of  
21      2003; that American Home Mortgage Servicing was the  
22      loan servicer for this mortgage between 2008 and 2012;  
23      that Ocwen was the loan servicer for this mortgage loan  
24      following American Home Mortgage Servicing; that the  
25      mortgage loan has been in default for more than ten

1 years, and that despite not making any mortgage loan  
2 payments in more than ten years, and while no longer  
3 personally liable for the loan, Mr. Shakoori continues  
4 to reside at the property subject to a valid and  
5 enforceable mortgage lien and default.

6 There is a second layer of evidence that we will  
7 present to this Court. This consists of documentary  
8 evidence that can and will fill any holes, to the  
9 extent any exist, that resolve from Mr. Shakoori's  
10 testimony. Documents submitted to this Court as  
11 evidence will demonstrate that U.S. Bank, as Trustee is  
12 the current holder of the original promissory note that  
13 Mr. Shakoori signed in connection with the 2003 Option  
14 One mortgage loan; and moreover, that the promissory  
15 note is indorsed in blank by an allonge permanently  
16 affixed to the note.

17 Documentary evidence will also demonstrate that  
18 U.S. Bank, as Trustee possesses the original mortgage  
19 agreement that Mr. Shakoori signed in connection with  
20 the 2003 mortgage loan, and that that mortgage  
21 agreement was recorded in the property chain of title  
22 and exists today as the priority first lien mortgage on  
23 the Ten Rod Road property. Documents submitted to this  
24 Court will also demonstrate that the Shakoori loan was  
25 sold, transferred and deposited into the trust that he

1 listed as a creditor in his bankruptcy filings and with  
2 whom he attempted to negotiate a loan modification.  
3 The documents that are submitted to this Court will  
4 include a schedule of mortgage loans that is appended  
5 to the trust agreement, and on that schedule is Mr.  
6 Shakoori's loan identifiable by the loan number and the  
7 servicing number that are included on both the  
8 promissory note and the mortgage. And finally,  
9 documentary evidence will demonstrate that LaSalle  
10 Bank, who Mr. Shakoori listed as the creditor on his  
11 bankruptcy petitions, has resigned and that U.S. Bank  
12 was subsequently appointed.

13 There is a third layer of evidence that we will  
14 present in order to fill any holes that remain from the  
15 documents in Mr. Shakoori's testimony. And that is the  
16 testimony of a representative of U.S. Bank, as  
17 Trustee's current mortgage loan servicer, PHH Mortgage  
18 Corporation. It is anticipated that U.S. Bank's  
19 representative will testify as to the manner through  
20 which the Option One mortgage loan was transferred,  
21 sold and deposited into trust.

22 The testimony will also show the manner through  
23 which servicing of the Shakoori loan transferred from  
24 Option One to American Home Mortgage Servicing. The  
25 testimony will also demonstrate that American Home

1 Mortgage Servicing, Inc., changed its name to Homeward  
2 Residential, and then Homeward was sold to Ocwen  
3 Financial Corporation. Testimony will also inform the  
4 Court of the merger between Ocwen Financial and PHH  
5 Mortgage Corporation, the current mortgage loan  
6 servicer for the Shakoori loan.

7 And lastly, the testimony of U.S. Bank, as  
8 Trustee's representative will demonstrate the integrity  
9 and reliability of all servicing records of the  
10 Shakoori loan, including the transaction documents  
11 memorializing the sale and deposit into trust, and that  
12 this trust is rightfully pursuing equitable assignment  
13 through this lawsuit.

14 Applying the facts of this case to the law. In  
15 this circuit, the purchase of a promissory note has an  
16 equitable right to obtain the assignment of a mortgage  
17 and may accomplish that right by filing an equitable  
18 action in court. That is precisely what is happening  
19 in this lawsuit. There are three separate legal  
20 grounds through which U.S. Bank, as Trustee pursues  
21 equitable assignment.

22 First, the trustee of a securitized trust can  
23 establish that it holds the mortgage, or a pool of  
24 mortgages, is assigned to a securitized trust, by  
25 producing the executed agreement that assigns the pool

1 of mortgages with a schedule of the pool mortgage loans  
2 that clearly and specifically identifies the mortgage  
3 at issue as among those assigned. The evidence of this  
4 case demonstrates that the Shakoori loan was deposited  
5 into the Structured Asset Securities Corporation,  
6 Structured Asset Investment Loan Trust, Mortgage  
7 Pass-Through Certificates, Series 2003-BC11 on review  
8 of the trust schedule and on review of the loan  
9 schedule with the specific identifying numbers of the  
10 Shakoori loan. If there is any doubt from a review of  
11 these agreements, and there isn't, Mr. Shakoori's own  
12 bankruptcy filings confirm that the 2003-BC11 trust is  
13 the holder of the mortgage.

14 Second, under Rhode Island law, a party who is  
15 the holder of an original signed promissory note is  
16 entitled to enforce the obligations under the note.  
17 Here, the evidence of this case will demonstrate that  
18 U.S. Bank, as Trustee is the present holder of the  
19 promissory note that Mr. Shakoori signed in 2003.  
20 Moreover, that note is indorsed in blank by allonge  
21 permanently affixed to the note such that U.S. Bank, as  
22 Trustee has achieved holder in due course status under  
23 Rhode Island law. As the holder in due course status  
24 of the original promissory note, U.S. Bank, as Trustee  
25 is entitled to an assignment of the valid and

1 enforceable mortgage securing repayment of that note  
2 with a lien on property located at 1541 Ten Rod Road in  
3 Exeter, Rhode Island.

4 Third, Rhode Island law permits a split between  
5 the holder of the promissory note and the owner of the  
6 mortgage on record title. Despite the fact that there  
7 may be a split between the holder and record title, the  
8 Rhode Island Supreme Court has concluded that these two  
9 documents remain unified and that the mortgage has  
10 followed the note. Here, with the mortgage following  
11 the note under Rhode Island law, equity demands that  
12 this Court allow for an assignment of mortgage to U.S.  
13 Bank, as Trustee on proof that U.S. Bank, as Trustee is  
14 the holder in due course of the original promissory  
15 note.

16 Just three final important considerations to  
17 this equitable claim. U.S. Bank, as Trustee does not  
18 have a valid and enforceable claim at law due to Mr.  
19 Shakoori's ongoing and persistent challenges to the  
20 assignments of mortgage recorded in the property's  
21 chain of title. And in fact, U.S. Bank, as Trustee  
22 will not be submitting or relying upon the assignments  
23 of mortgage in order to prove up this case.

24 Second, there is no dispute at present that Mr.  
25 Shakoori is not personally liable for the money he

1 borrowed from Option One in 2003. That debt has been  
2 discharged through a Chapter 7 bankruptcy petition, and  
3 any pursuit of that debt would violate federal  
4 bankruptcy law.

5 And third, there is no dispute that Mr. Shakoori  
6 continues to reside at the property, remains on title,  
7 refuses to vacate, but at the same time is not paying  
8 any mortgage loan payments, no property taxes and no  
9 insurance. Mr. Shakoori has been living for free for  
10 more than ten years despite the lack of any dispute  
11 that he borrowed over \$300,000 in 2003 and that he  
12 secured repayment of that loan with a mortgage on the  
13 Ten Rod Road property.

14 For all of those reasons, for the evidence that  
15 we will submit, U.S. Bank, as Trustee is entitled to an  
16 equitable assignment of the mortgage. Thank you.

17 THE COURT: Okay. Thank you, Mr. Bodurtha.

18 Mr. Ennis, do you wish to give an opening  
19 statement?

20 MR. ENNIS: Yes. Is it possible I can do it  
21 from this position, your Honor, because I'm looking at  
22 the screen?

23 THE COURT: Sure.

24 MR. ENNIS: Good morning, your Honor. I'd like  
25 to address a few of the issues in regard to this case

1 that we will believe that the evidence will show and  
2 the admissions that have been filed in this case, the  
3 requests for admissions which were mailed to the  
4 purported plaintiff in May of 2018 which have not been  
5 answered. These are the facts which have already been  
6 established as a matter of law. And I would  
7 specifically present to the Court Request for Admission  
8 Number Seven which states that no entity within the  
9 name of Structured Asset Securities Corporation,  
10 Structured Asset Investment Loan Trust, Mortgage  
11 Pass-Through Certificates, Series 2003-BC11 has ever  
12 existed. That is an established fact which is the name  
13 of the plaintiff in this case which is seeking relief.

14 Request for Admission Eight, which is a fact  
15 accepted as true, deemed true, pursuant to Federal Rule  
16 of Civil Procedure 36, is that LaSalle Bank National  
17 Association was never the trustee for Structured Asset  
18 Securities Corporation, Structured Asset Investment  
19 Loan Trust, Mortgage Pass-Through Certificates, Series  
20 2003-BC11. Request for Admission Forty, which is  
21 deemed admitted, which is very crucial: U.S. Bank  
22 National Association was never a trustee for any entity  
23 named Structured Asset Investment Loan Trust, Mortgage  
24 Pass-Through Certificates, Series 2003-BC11. And  
25 Request for Admission Number Four, there is no such

1       entity named Structured Asset Investment Loan Trust,  
2       Mortgage Pass-Through Certificates, Series 2003-BC11.

3               Now, as a result, your Honor, by virtue of that,  
4       my brother indicated, he's the attorney for this trust,  
5       it has been deemed admitted that this trust does not  
6       exist. So I would suggest that the plaintiff cannot  
7       proceed under the name it's proceeding under because it  
8       doesn't exist as a matter of law and fact.

9               Now, your Honor, a review of the testimony of  
10       the documents which will be presented, we're not  
11       disputing that my client signed the note and signed the  
12       mortgage. The question is: What happened after July  
13       16, 2003? On July 16, 2003, the testimony will  
14       demonstrate that my client had a closing at a law  
15       office on Douglas Avenue in Providence around 5 o'clock  
16       p.m. At that time, he did sign the promissory note and  
17       he did sign the mortgage. However, the documents  
18       presented by the plaintiff, and pursuant to their  
19       answers to interrogatories, indicates that the  
20       so-called allonge was signed on July 16th, 2003, by a  
21       person named Mary Conway who at the time was in  
22       Florida.

23               Pursuant to Rhode Island General Law 6A-3-204,  
24       for an allonge to be effective -- allonge isn't used in  
25       that statute, but it states that a paper affixed to the

1 note is effectively the same as an indorsement provided  
2 that the signature is made on the paper affixed to the  
3 note. Now, there is no dispute and no evidence that  
4 the note and allonge were affixed together on July 16,  
5 2003; rather, this so-called traveling allonge was  
6 signed by an employee of Option One in ink on that same  
7 day.

8 Now, why is that important, your Honor? This  
9 was a rescission loan. The loan wasn't even funded  
10 until July 21st, 2003, under the Truth in Lending Act.  
11 A homeowner has three business days to change their  
12 mind and to cancel the loan. The closing statement  
13 provided by the -- which is one of the plaintiff's  
14 exhibits, indicates that the loan was funded on July  
15 21st; thus, the loan could not be negotiated or  
16 transferred or sold because the promise that my client  
17 made to sign the promissory note and sign the mortgage  
18 was conditional upon the passage of three days. He had  
19 that absolute right to rescind.

20 The note that he signed did not get transmitted  
21 to Option One on July 16, 2003; it remained in the  
22 possession of the closing attorney. As a result, the  
23 note was never indorsed under Rhode Island law. And  
24 they've admitted that it was indorsed on July 16th. If  
25 it was signed before the closing, it was not effective

1 because the note was not yet a note. A note consists  
2 of a promise to pay money. If the allonge was signed  
3 before the closing, before my client signed the note,  
4 it's not effective to transfer the note. So that is a  
5 problem that is there; namely, the note has never been  
6 indorsed as required by Rhode Island law.

7 Also there is no testimony available as to when  
8 that was affixed to the note, the so-called allonge.  
9 The allonge -- Supreme Court in *Note Capital Group vs.*  
10 *Perretta* indicated that allonge -- they used the  
11 Black's Law Dictionary -- which indicates that an  
12 allonge is a piece of paper affixed to the note for the  
13 purpose of further indorsements.

14 Well, think about it. Affixed to the note for  
15 the purpose of further indorsements. That is a future  
16 event that the Supreme Court envisioned that first the  
17 allonge has to be affixed. Second, the signature  
18 occurs. In this case, your Honor, it wasn't affixed;  
19 it was a separate piece of paper floating around  
20 somewhere in Option One land and eventually made its  
21 presence.

22 THE COURT: Mr. Ennis, I'm a little unclear. I  
23 want to try to understand your argument. I'm a little  
24 unclear on what you're saying.

25 So is your argument that the allonge wasn't

1 affixed to the loan documents on July 16th and  
2 therefore it's not valid, or is your argument that the  
3 indorsement occurred before the loan was funded after  
4 the three-day waiting period or is it both of those  
5 things? I'm a little unclear.

6 MR. ENNIS: Well, I raised the TILA issue  
7 because technically there's no funding at that point so  
8 they can't -- there's no real note to transfer because  
9 the client has an absolute right to rescind. But in  
10 terms of the fix, there is no doubt that when the  
11 allonge was signed on July 16, 2003, it was not affixed  
12 to the note. So the way the Supreme Court in *Note*  
13 *Capital Group vs. Perretta* stated, quoting Black's Law  
14 dictionary, for the allonge to be effective and under  
15 U.C.C. 3204, the piece of paper has to be affixed to  
16 the note when the signature is put on the piece of  
17 paper. That was not the case, and there's no way they  
18 can demonstrate that.

19 THE COURT: Well, okay. So, I mean, just so I'm  
20 clear, your argument is -- are you saying that in order  
21 for a signature to be valid, it literally has to be  
22 stapled to the document or paper-clipped to the  
23 document at the time it is signed? I've signed a lot  
24 of mortgages in my life, and things aren't all stapled  
25 together at the time you sign the mortgage.

1           So, I mean, is that what you're saying?

2           MR. ENNIS: Under the definition that the Rhode  
3           Island Supreme Court took in *Note Capital Group vs.*  
4           *Perretta*, and under the U.C.C., an allonge has to be  
5           affixed to the note. Now, affixed can either be  
6           paper-clipped, can be stapled, but it has to be affixed  
7           to the note before the signature is placed on that  
8           document.

9           And the purpose of that is to prevent, some  
10          cases have talked about, mischievous or in other ways  
11          fraudulent conduct, where you have an allonge floating  
12          around and traveling, the way the original statute  
13          under the U.C.C. allowed the use of an allonge when  
14          there was no additional room on the note to sign. The  
15          allonge is a substitute for a stamp on the bottom of  
16          the note.

17          THE COURT: Okay. So I understand -- I think I  
18          understand what your argument is.

19          Now, what is this business about Mary Conway  
20          being in Florida? What does that have to with  
21          anything?

22          MR. ENNIS: Well, she was an employee of Option  
23          One and in the Option One Tampa office at that time,  
24          and, thus, she was not in Rhode Island to get the note  
25          and sign it. Indorsed the note after my client signed

1 the note. So it wasn't something -- they said it  
2 happened on July 16th, they've admitted on July 16th.  
3 We believe that testimony will show Mary Conway was not  
4 in Rhode Island and did not affix her signature after  
5 the note was signed and, more importantly, did not  
6 affix her signature to the allonge while it was affixed  
7 to the note.

8 THE COURT: Okay. All right. I understand  
9 that.

10 Now, what does the funding after three days have  
11 to do with this?

12 MR. ENNIS: Well, the reason for that is, your  
13 Honor, the note for a negotiable instrument -- there  
14 was a failure of consideration until the three days  
15 went by. There was no fund -- you know, a promissory  
16 note is a promise to pay money in return for  
17 consideration. And the consideration would have been  
18 the payment of the payoff from the prior loan as well  
19 as funds to my client. If this had been a purchased  
20 money security instrument where my client went to the  
21 closing and purchased the property on that day, the  
22 note would be effective that day because the money  
23 would have been transferred to the closing agent for  
24 distribution to my client on July 16th.

25 However, in this case, there was no funding of

1 the loan until July 21st, 2003, when it was recorded.  
2 I believe July 16th was a Wednesday. The third  
3 business day was the 19th. No business was transacted  
4 on Sunday, the 20th. And then on the 21st the money  
5 was transferred to the settlement agent to make  
6 distribution of funds and to record the mortgage.

7 THE COURT: Well, wouldn't that basically make  
8 every mortgage invalid because every mortgage has a  
9 waiting period because that's required by law?

10 MR. ENNIS: Only owner-occupied single  
11 family -- excuse me, owner-occupied refis with anybody  
12 other than the original creditor. It doesn't make  
13 it -- it makes it effective July 21st, 2003, not that  
14 it's illegal or void or invalid. But the homeowner has  
15 an absolute right to cancel that obligation for three  
16 business days.

17 THE COURT: Right, I understand that. I mean, I  
18 think what you're saying, and this is what I'm trying  
19 to figure out, is you're saying that the indorsement is  
20 not valid because the indorsement occurred before the  
21 waiting period expired.

22 MR. ENNIS: That's a secondary argument, yes,  
23 your Honor.

24 THE COURT: But that would, in effect, make  
25 every indorsement where there's a waiting period an

1       invalid indorsement.

2               MR. ENNIS: Well, very often, your Honor. It  
3       appears Option One is one of the few entities that has  
4       dates on the allonges. Very rarely, your Honor, do  
5       allonges have dates on them. So thus, in this case  
6       they've identified the date as -- when I asked them  
7       what the date was, originally they objected until  
8       February 2nd, 2022; at which point, they said look at  
9       the dates on the note and allonge.

10              THE COURT: But you're not really answering my  
11       question.

12              MR. ENNIS: No, wait, your Honor. Because most  
13       of the times allonges are not dated.

14              THE COURT: But that doesn't change the -- the  
15       fact that they're not dated doesn't change the reality  
16       of the date that they're signed.

17              MR. ENNIS: Well, very often nobody knows when  
18       they were signed.

19              THE COURT: But that's not an answer to my  
20       question either. I think I understand what you're  
21       saying. You're not saying that what I'm asking you is  
22       untrue. So I think your argument is that an  
23       indorsement that occurs before the three-day waiting  
24       period has passed is effectively a voidable or voided  
25       indorsement. I think that's what you're saying.

1 MR. ENNIS: Yes, your Honor, because there's  
2 nothing to assign or transfer because it's not an  
3 absolute promise, unconditional promise.

4 THE COURT: All right.

5 MR. ENNIS: Now, another problem with the  
6 plaintiff's case that the evidence will point out,  
7 there is absolutely no evidence that the mortgage was  
8 ever transferred from Option One, anybody. They  
9 present a purported chain of title.

10 And notably absent in that chain of title is any  
11 indication from them as to what Option One did with the  
12 mortgage or the note. There's absolutely no evidence  
13 to that effect. They start with evidence from Lehman  
14 Brothers Bank, FSB, which purports to have entered into  
15 an agreement with Lehman Brothers Holding, Inc., to  
16 purchase or sell loans. There is no loan schedule in  
17 that document. There is no reference to the  
18 defendants' mortgage and note in that document. It is  
19 a gap.

20 Likewise, they then present evidence purporting  
21 to be a sales agreement from Lehman Brothers Holding,  
22 Inc., to Structured Asset Securities Corporation. Once  
23 again, there's no loan schedule. There's no reference  
24 to the defendants' mortgage and note. So on  
25 transaction number two, there's nothing there.

1           Now, I would note, your Honor, these are  
2       the -- the plaintiff cited the case of *U.S. Bank vs.*  
3       *Ibanez*, which was a Massachusetts Supreme Court case in  
4       which the Massachusetts Supreme Court, faced with the  
5       identical issue in this case and basically the same  
6       players, the same originators, found that U.S. Bank did  
7       not meet its burden, could not show the transactions  
8       one by one. Could not prove the transactions from  
9       Option One to Lehman Brothers Bank, from Lehman  
10      Brothers Bank to Lehman Brothers Holding and from  
11      Lehman Brothers Holding to Structured Asset Securities  
12      Corporation.

13           There was a gap in the chain of title. They  
14      just did not have the loan schedules. They did not  
15      have identification, assuming these documents could be  
16      authenticated.

17           Now, they purport to have a trust agreement  
18      which they claim contains a loan schedule. That, by  
19      the way, was provided on February 2nd, 2022, which was  
20      the basis for my motion in limine after discovery was  
21      long closed. Now, the difficulty with that is that is  
22      the so-called trust agreement dated August 1st, 2003,  
23      but it doesn't say it's transferring the loans. It  
24      states that on the closing date of the loan, October  
25      31st, 2003, a sale of loans will occur. It's an

1 anticipatory event. It says we're not doing anything  
2 today, but on October 31st we're going to buy loans.

3 But once again, you've got a gap. Option One,  
4 we don't know what happened. Never got to Lehman  
5 Brothers Bank, never got to Lehman Holding, never got  
6 to SASCO. And they purport to have a loan schedule,  
7 but we question the authenticity of that. We don't  
8 really know when that occurred. We asked for all this  
9 in discovery, and they basically objected to everything  
10 saying it wasn't relevant and February 2nd when they  
11 realized we better put this in.

12 Now, therefore, we believe there is a complete  
13 lack of evidentiary basis to prove that either this, by  
14 the way, nonexistent entry, based upon the request for  
15 admissions, neither had or never had the note or the  
16 mortgage.

17 Now, they're trying to prove it through my  
18 client because of my client's bankruptcy schedules.  
19 Well, your Honor, the bankruptcy schedules -- my  
20 client, through two attorneys, identified as creditor  
21 certain entities. But the definition of creditor, your  
22 Honor, is not what the plaintiff suggests. 11 U.S.C.  
23 101 has the definitional sections for creditor in claim  
24 pursuant to the bankruptcy court. And creditor, under  
25 11 U.S.C. 101, Section 10, means, I read, "The term

1 creditor means: A, entity that has a claim against the  
2 debtor that arose at the time of or before the order  
3 for relief concerning the debtor; or B, the entity that  
4 has a claim against the estate specified in Section  
5 348(d), 502(f), 502(g), 502(h) or 502(i) of this title;  
6 or entity that has a community claim."

7 So we then have to see what claim means in the  
8 bankruptcy code. And the claim specifically does not  
9 mean what my brother suggests it means. 11 U.S.C.  
10 101(5), "The term 'claims' means: A, right to payment,  
11 whether or not such right is reduced to judgment,  
12 liquidated, unliquidated, fixed, contingent, matured,  
13 unmatured, disputed, undisputed, legal, equitable,  
14 secured or unsecured." So there's no equation of  
15 creditor with the term "holder" or "owner." As a  
16 matter of fact, in the 2015 bankruptcy, in which case  
17 my client was represented by attorney Christopher  
18 Lefebvre, the Chapter 7 bankruptcy in Schedule D listed  
19 this claim as disputed, specifically.

20 So there's no suggestion that my client can  
21 basically create ownership of a note or a mortgage by  
22 virtue of a bankruptcy petition. The 2012 petition was  
23 a Chapter 13 case which ended up getting dismissed  
24 without discharge and the Chapter 7 petition in 2015  
25 did have a discharge. The fact that my client, through

1 his attorney, utilized the definitional section of 11  
2 U.S.C. 101, he had to do it; he had to identify  
3 whatever was on his paperwork that he had. So the  
4 attorney relied on the statute, but put the so-called  
5 claim in as to creditor which is what the bankruptcy  
6 code requires.

7 Now, the Supreme Court in Rhode Island had  
8 multitude cases relating to the nature of mortgages and  
9 obligation notes. The seminal case is *Bucci vs. Lehman*  
10 *Brothers* in which the Supreme Court in Rhode Island  
11 indicated that you can have a split. *Bucci* was a  
12 so-called MERS case. MERS is the nominator for the  
13 holder of the note.

14 And the Supreme Court held in that case that  
15 there's nothing wrong with the split so long as the  
16 mortgagee is the agent for the owner of the note. They  
17 found in a MERS case the term "nominee," which is in  
18 the MERS mortgage, it's just not here, was in fact the  
19 agent as nominee. They followed a Massachusetts case  
20 called *Eaton* which pretty much establishes the same  
21 thing. So in Rhode Island, as long as the entity  
22 holding the mortgage is the agent for the owner of the  
23 note, they are allowed to foreclose so long as there's  
24 that agency relationship.

25 Rhode Island is a title state in which property

1 is deeded to the mortgagee subject to defeasance upon  
2 payment of the obligation. So the two are intertwined.  
3 So somebody has to be owed the money and somebody has  
4 to have the mortgage securing that obligation.

5 In this case, there's been no demonstration that  
6 the mortgage has gone beyond -- they have no evidence  
7 showing that the mortgage went to Lehman Brothers which  
8 was the beginning entity in the so-called  
9 securitization of, once again, the nonexistent trust.  
10 They have been aware of this since 2018 and could have  
11 amended their petition, their complaint, but they  
12 didn't do so.

13 The gaps create a significant problem for them.  
14 Because of that problem, I don't see how they can  
15 proceed even today because they've admitted they don't  
16 exist. So I don't know how we go forward with an  
17 entity that doesn't exist given their failure to seek  
18 to remove the admissions despite knowledge of these  
19 admissions for now almost four years.

20 THE COURT: Okay. Thank you, Mr. Ennis.

21 MR. ENNIS: Thank you, your Honor.

22 THE COURT: All right. So I'm interpreting Mr.  
23 Ennis's opening statement as basically a motion to  
24 dismiss. And I want to -- because you're raising,  
25 effectively, a legal argument, this business about the

1 entity not existing and the request for admissions.

2 So Mr. Bodurtha, I'm going to ask you to respond  
3 to those now before we get to the testimony. I'm a  
4 little unclear about all of this.

5 MR. BODURTHA: Certainly, your Honor. Your  
6 Honor, there are requests for admissions that were  
7 served in this case upon my predecessor counsel, and I  
8 will concede to the Court that they were not timely  
9 responded to. They were ultimately responded to, but  
10 predecessor counsel did not file a response or seek an  
11 extension within the 30-day deadline.

12 Requests for admissions are geared towards  
13 facts, what facts can be deemed admitted. They are  
14 not, however, conclusions of law. You cannot request  
15 that someone admit that they're in default or that  
16 they're subject to judgment. What I'm suggesting to  
17 the Court today is that the requests for admissions  
18 seek legal conclusions which can be easily overcome  
19 based upon a review of the documents that are  
20 admissible in evidence, based upon the testimony that  
21 the Court will receive from Mr. Shakoori, from a  
22 representative of U.S. Bank, N.A., as Trustee and based  
23 upon the totality of evidence in making what is  
24 effectively an equitable claim.

25 Much of the requests for admissions deal with

1 the assignments of mortgage and how those assignments  
2 were executed and recorded and how they exist according  
3 to record chain of title. We are not pursuing any  
4 relief based upon the assignments. We are pursuing  
5 relief based upon the fact that U.S. Bank, as Trustee  
6 holds the promissory note; that U.S. Bank, as Trustee,  
7 through its mortgage loan servicer, had possession and  
8 can authenticate all of the deal documents, and that  
9 Mr. Shakoori himself has filed several bankruptcy  
10 petitions and entered into a loan modification  
11 agreement that demonstrate the travel of this loan.

12 For that reason -- and I will concede to the  
13 Court that it may be evidence or facts that the Court  
14 ought to consider in reaching this decision; however, I  
15 don't think that what Mr. Ennis is suggesting is  
16 dispositive of this case or should dismiss it before  
17 the Court hears the entirety of the evidence.

18 THE COURT: Okay. Get me clear on who the  
19 plaintiff is and what the issue is there. That's the  
20 admission number seven.

21 So are you saying that ultimately the admission  
22 was responded to and denied and that this is the  
23 correct entity, or are you saying that there is an  
24 error in the name of the entity that's in the complaint  
25 but that hasn't been corrected. I'm a little unclear

1 on that.

2 MR. BODURTHA: There is no error in the entity  
3 that has been identified as the plaintiff in this  
4 complaint. If anything, the admission -- and the  
5 requests for admissions were responded to, but the  
6 admission should be withdrawn on the proof that we are  
7 about to submit to this Court the deal documents  
8 demonstrating that the trust exists, the trust has  
9 filings with the Securities and Exchange Commission.  
10 Mr. Shakoory has filed bankruptcy proceedings under the  
11 pains and penalties of perjury that identified the bank  
12 that served as trustee before U.S. Bank.

13 There is really no dispute that U.S. Bank, N.A.,  
14 as Trustee for this trust exists and is valid other  
15 than the fact that our predecessor counsel failed to  
16 timely respond to requests for admissions.

17 THE COURT: All right. So you're just  
18 saying -- I think it's clear now. You're just saying  
19 that this was an error, there was a failure to respond,  
20 but the admission can't be effectively relied upon  
21 because it's not true.

22 MR. BODURTHA: Correct.

23 THE COURT: Okay. All right. I understand.

24 As to the other two admissions Mr. Ennis  
25 referred to about LaSalle Bank not being the trustee

1 and U.S. Bank not being the trustee, I take it your  
2 argument is basically the same there; that these were  
3 admissions that were not responded to, but they are  
4 contrary to the facts that you intend to demonstrate in  
5 the course of the trial.

6 MR. BODURTHA: Correct.

7 THE COURT: All right. Well, I'll take all of  
8 that under advisement. And you can call your first  
9 witness.

10 MR. BODURTHA: Call Mr. Shakoori, the borrower,  
11 please.

12 THE CLERK: Raise your right hand.

13 MASOUD SHAKOORI, PLAINTIFF'S WITNESS, SWORN

14 THE CLERK: Please state your name and spell  
15 your last name for the record.

16 THE WITNESS: First name is Masoud, last name is  
17 Shakoori-Naminy, S-h-a-k-o-o-r-i.

18 THE CLERK: Thank you. You may be seated.

19 THE COURT: All right. Good morning, Mr.  
20 Shakoori.

21 THE WITNESS: Good morning, your Honor.

22 THE COURT: You may inquire, Mr. Bodurtha.

23 MR. BODURTHA: Thank you, your Honor.

24 THE COURT: Are you going to do it -- off the  
25 record.

1 (Off-the-record discussion)

2 THE COURT: Let's go back on the record.

3 DIRECT EXAMINATION

4 BY MR. BODURTHA:

5 Q. Good morning, Mr. Shakoori.

6 A. Good morning, sir.

7 Q. Is it okay if I call you Mr. Shakoori? I know we  
8 talked about this before.

9 A. Yes, not a problem.

10 Q. I'd call you Mike, but this is a more formal  
11 setting so we'll do it with Mr. Shakoori.

12 A. Sure.

13 Q. Where do you live?

14 A. I live in 1541 Ten Rod Road, Exeter, Rhode Island  
15 02822.

16 Q. Mr. Shakoori, how long have you lived there?

17 A. Since 2000, I believe, or 2001. I'm not quite  
18 sure.

19 Q. Do you own the property you live in?

20 A. Yes.

21 Q. Do you recall when you purchased the property?

22 A. When I pulled the first mortgage. I don't know  
23 the exact date.

24 Q. Okay. Your bankruptcy filings indicate a purchase  
25 in January of 2001 for roughly \$200,000. Is that

1 accurate?

2 A. I guess, yes.

3 Q. Okay. And in November of 2001, you obtained a  
4 mortgage loan from Finance America, LLC, correct?

5 A. I guess. I don't have any documents in front of  
6 me.

7 Q. Okay. Let me see if I can refresh your  
8 recollection here.

9 THE COURT: Let's go off the record for a  
10 second.

11 (Off-the-record discussion)

12 Q. Mr. Shakoori, what I'm showing you is a document  
13 that has been marked for identification as Plaintiff's  
14 Exhibit letter B. And I just enlarged it as best I  
15 can. Can you see the words on the page? It's going to  
16 be --

17 A. I can see the heading and the book number and the  
18 last thing is mortgage.

19 Q. All right. Bear with me here because what we're  
20 going to do is go to the last page.

21 All right. So now, Mr. Shakoori, I am on page  
22 21 and 22 of Exhibit B at the top of that page. Is  
23 that your signature?

24 A. Yes.

25 Q. Okay. And then if I go through the pages that

1 precede that, if you look at the bottom, are those your  
2 initials on the bottom?

3 A. Yes.

4 Q. Okay. Now, I'm going to go back to the very first  
5 page of the agreement, okay. All right. Now, this  
6 agreement that has -- and let me go to the bottom.

7 Those are your initials at the bottom, MSN?

8 A. Yes.

9 Q. Okay. And looking at this document, it appears  
10 that it's dated November 5, 2001. Do you see that?

11 A. Yes.

12 Q. Okay. Does review of this document refresh your  
13 recollection of the mortgage loan you entered into with  
14 Finance America?

15 A. Yes.

16 Q. Okay. I'm going to go to the next page that has  
17 the actual amounts. Do you recall how much money you  
18 borrowed from Finance America?

19 A. I do not, but it says it right here.

20 Q. Okay. That was my next question. It says in the  
21 actual agreement that it was \$243,750. Does that  
22 refresh your recollection of the amount you borrowed?

23 A. Yes.

24 Q. Did you borrow this money to purchase the  
25 property?

1 A. Yes.

2 Q. I believe you had owned the property for at least  
3 ten months prior to executing this mortgage loan. Is  
4 there any reason that you can recall for the delay in  
5 the purchase and the mortgage funding?

6 A. I'm a little confused with your question. I'm  
7 sorry, go ahead.

8 Q. Let me see if I can rephrase.

9 The question is: This mortgage is dated  
10 November of 2001, right, but the property purchase was  
11 actually ten months earlier. Based upon your  
12 recollection of events, can you tell us why there was  
13 that ten-month period of delay?

14 A. No.

15 Q. Okay. Now, when you signed this agreement, Mr.  
16 Shakoori, did you understand that you were pledging  
17 1541 Ten Rod Road as security to guarantee repayment of  
18 this loan?

19 A. Yes.

20 Q. Okay. Moving beyond the signature date on the  
21 mortgage, you made all regular monthly mortgage loan  
22 payments to Finance America, correct?

23 A. I'm sure, yes.

24 Q. You're sure. Okay.

25 Mr. Shakoori, you refinanced the Finance America

1 mortgage loan in July of 2003, correct?

2 A. I don't -- do you have any paperwork?

3 Q. You don't recall that? Let me see if I can  
4 refresh your recollection.

5 What I'm showing you is marked as Plaintiff's  
6 Exhibit C.

7 A. I can see that.

8 Q. All right. Now, the first page of the actual  
9 exhibit is titled "Adjustable Rate Note," and it's  
10 dated July 16, 2003.

11 Do you have that before you?

12 A. 7-16-03? Yes.

13 Q. Yes. And why don't you take a quick look at this  
14 document to see if it refreshes your recollection as to  
15 this loan.

16 A. Okay.

17 Q. Now, having looked at this, does that refresh your  
18 recollection as to the loan you obtained in 2003?

19 A. Yes.

20 Q. Do you see the name of the lender?

21 A. Where would that be? No. Can you tell me the  
22 number so I can see it.

23 Q. If you look at paragraph number one, borrower's  
24 promise to pay, do you see where it says the lender is?

25 A. Roughly, yes. Letters are very small.

1 Q. Okay. Would you agree with me that the lender  
2 identified on this note is Option One Mortgage  
3 Corporation, a California corporation?

4 A. Yes.

5 Q. Okay. Would you agree with me that the loan was  
6 in the amount of \$315,400?

7 A. Yes.

8 Q. Okay. Now, if I take you to page 4 of 5, is that  
9 your signature?

10 A. It appears to be.

11 Q. Okay. And on the bottom of each page, are those  
12 your initials, MS?

13 A. Yes.

14 Q. Okay. And on the first page, your initials, MS,  
15 right?

16 A. Yes.

17 Q. Okay. Do you recall actually signing the note,  
18 Mr. Shakoori?

19 A. Yes.

20 Q. Okay. When you signed the note -- I'm going to  
21 move you to another page. This is page 5 of 5 of this  
22 exhibit.

23 When you signed the note, was this document  
24 attached to it? It's called allonge to note?

25 A. I do not recall.

1 Q. Okay.

2 A. I do not recall.

3 Q. Okay. If you look at the bottom of the page, do  
4 you see your initials on the bottom of the page?

5 A. No. I don't see my initials.

6 Q. All right. But your initials are on the bottom of  
7 every other page of the note?

8 A. The one you're showing me is missing.

9 Q. This one doesn't have it because it has your  
10 signature, right?

11 A. Yes.

12 Q. Okay. But on the page before there, there's your  
13 initials, page 2 and 3?

14 A. Yes.

15 Q. And on the first one, there are your initials on  
16 page 1 of 3, right?

17 A. Yes.

18 Q. Okay. Now, you understood, Mr. Shakoori, when you  
19 signed this note, that you would be required to make  
20 monthly payments, right?

21 A. Yes.

22 Q. And you understood that if you didn't make the  
23 monthly payments that you would default on the note,  
24 right?

25 A. Yes.

1 Q. Did you also understand that this note had an  
2 adjustable rate?

3 A. I'm sorry?

4 Q. Did you also understand that the note had an  
5 adjustable rate?

6 A. I'm not sure.

7 Q. Okay. Do you know what an adjustable interest  
8 rate is?

9 A. I believe it changes.

10 Q. Okay. Do you know if this note had an adjustable  
11 interest rate?

12 A. I'm not quite sure.

13 Q. Okay. Now, if I can turn your attention to the  
14 page that we're on, okay. This is on page 2 of 5. And  
15 if you look -- I'm going to zoom in on this so you can  
16 see it, okay. If you look at paragraph 3, payments,  
17 time and place of payments, do you see that?

18 A. Yes.

19 Q. All right. And if you read through that, it  
20 indicates that there's a first day for each month of  
21 payment, correct?

22 A. Yes.

23 Q. As of September 1, 2003, right?

24 A. Yes.

25 Q. And a last date for payment of August 1, 2033. Do

1       you see that?

2       A.     Yes.

3       Q.     And you would agree with me that we're not quite  
4       at August 1 of 2033, right?

5       A.     Yes.

6       Q.     So this note still has payments that are owing and  
7       due on it, correct?

8       A.     Yes.

9       Q.     All right. And you haven't paid off the note in  
10      its entirety at any time before today, have you?

11      A.     No.

12      Q.     So you haven't obtained a refinance or other funds  
13      that you used to pay off this loan, right?

14      A.     No.

15      Q.     Okay. So you would agree with me that this note  
16      remains owing and due, correct?

17             MR. ENNIS: Objection to the form, your Honor.  
18      I believe that calls for a legal conclusion as to my  
19      client.

20             THE COURT: Well, you can rephrase the question  
21      and --

22             MR. BODURTHA: I'll rephrase it.

23             THE COURT: -- ask what he understands it to be.

24             MR. BODURTHA: I'll rephrase it.

25      Q.     You would agree with me, Mr. Shakoori, that you

1 still owe money on this note, correct?

2 A. Yes, with explanation.

3 Q. Okay. Now, with the understanding that you have  
4 been discharged of all debts in the bankruptcy court,  
5 right?

6 A. Yes.

7 Q. Okay. So that you're not -- is it your  
8 understanding that you're not personally liable for the  
9 note, right?

10 A. That's what I was told by my attorney.

11 Q. Okay. All right.

12 MR. BODURTHA: Your Honor, I have an original  
13 copy of the promissory note. May I approach and have  
14 the witness look at it?

15 THE COURT: Sure. Show it to Mr. Ennis first.

16 Q. Now, Mr. Shakoori, what I have given you is the  
17 original version of the promissory note that has been  
18 marked as Exhibit C. And I'm going to -- sorry. I'm  
19 going to pull this copy back up on your screen and ask  
20 you to confirm that the document you're holding in your  
21 hand is the same as the copy that you just reviewed on  
22 the digital screen.

23 A. Could you make it larger, please.

24 Q. Sure.

25 A. Thank you.

1 Q. Is that big enough?

2 A. Yes.

3 MR. ENNIS: Your Honor, I believe a different  
4 one has been submitted. The digital screen shows a  
5 bankruptcy document --

6 THE COURT: Well, do you want to stipulate that  
7 the document introduced as Exhibit C is a true and  
8 accurate copy of the original?

9 MR. ENNIS: Well, of the note, not of the  
10 allonge, your Honor.

11 THE COURT: All right. Mr. Bodurtha can ask his  
12 questions.

13 MR. BODURTHA: Okay.

14 Q. Mr. Shakoori, let me turn your attention to the  
15 last page of that document that I handed to you.

16 A. Okay.

17 Q. In reviewing that last page, is that the same page  
18 as what you're seeing on the screen as Exhibit C?

19 A. Yes, except the loan number has been crossed out.

20 Q. Right. So the loan number and servicing number  
21 have been redacted. That's a requirement in order to  
22 file documents so that we don't divulge your personal  
23 information in the matter -- in a public record. But  
24 beyond those redactions, is that the same document that  
25 you're looking at in front of you?

1 A. It appears to be, yes.

2 Q. Okay. Now, if you go to the page before on the  
3 document you're holding.

4 A. Okay.

5 Q. That's your signature on the page, right?

6 A. It appears to be, yes.

7 Q. Okay. And go to the page before. That's your  
8 initials at the bottom of the page?

9 A. Yes.

10 Q. And the page before that?

11 A. Okay.

12 Q. Those are your initials at the bottom of the page?

13 A. Correct, yes.

14 Q. So would you agree with me that that document is  
15 the same document as what you were looking at under  
16 Exhibit C?

17 A. Yes.

18 Q. Okay. Do you have any reason to doubt that the  
19 document you're holding is the original promissory note  
20 that you signed?

21 MR. ENNIS: Objection, your Honor. How can he  
22 establish the original nature of a document? He can  
23 ask him is that your signature, but they're trying to  
24 authenticate the note through my client, including the  
25 allonge.

1 THE COURT: I understand your objection. It's  
2 overruled. He can testify, and he has testified that  
3 the documents are identical. I don't know that he can  
4 do more than that.

5 MR. BODURTHA: My question was whether Mr.  
6 Shakoori has any reason to doubt that that's the  
7 original promissory note that he signed in 2003.

8 THE COURT: All right. So the objection is  
9 noted and overruled. You may answer that question.

10 THE WITNESS: The last page, allonge to note, I  
11 have never seen that.

12 Q. Okay.

13 A. This is the first time.

14 Q. Okay. So you didn't see that when you signed the  
15 promissory note?

16 A. Correct.

17 Q. Okay.

18 A. I have not.

19 Q. How about the three pages that precede the  
20 allonge? Are those -- do you have any reason to doubt  
21 that those are the original document pages that you  
22 initialled and you signed when you obtained the loan  
23 from Option One?

24 A. It appears, except the original looks like it was  
25 copied.

1 Q. Okay. Thank you.

2 MR. BODURTHA: May I approach, your Honor?

3 THE COURT: Yes.

4 Q. Mr. Shakoori, in order to obtain this loan from  
5 Option One, you had to sign a mortgage, correct?

6 A. Yes.

7 Q. Do you recall signing the mortgage?

8 A. I'm not looking at --

9 Q. I'm sorry. I was going to ask you first if you  
10 recalled it. And if you don't, then I can show you the  
11 mortgage to refresh your recollection.

12 A. Isn't that the paper you just gave me?

13 Q. I just gave you a promissory note. I'm asking you  
14 about the mortgage.

15 Do you recall signing a mortgage?

16 A. I signed papers, yes.

17 Q. Okay. Let me show you this document to refresh  
18 your recollection. It's marked as Exhibit D.

19 Do you recognize this document, Mr. Shakoori?

20 A. Can you enlarge it, please.

21 Q. Yes.

22 A. Thank you. Okay.

23 Is this recorded?

24 Q. Do you see the recording marks at the top of the  
25 document, book 212, page 001?

1 A. Yes.

2 Q. Bear with me here. Is that your signature, Mr.  
3 Shakoori, on page 7 of the exhibit?

4 A. It appears to be.

5 Q. Okay. On page 6, are those your initials at the  
6 bottom of the page?

7 A. Yes.

8 Q. And on page 4 of 6, are those your initials at the  
9 bottom of the page?

10 A. Yes.

11 Q. Page 3, those are your initials?

12 A. Yes.

13 Q. All right. And page 1, are those your initials?

14 A. Yes.

15 Q. Okay. And if I direct your attention to page 1 --  
16 let me know if I need to blow this up -- do you see the  
17 names on that page?

18 A. Yes.

19 Q. And your name is listed on there, is it not?

20 A. Yes.

21 Q. And also the mortgagee is listed on that page, is  
22 it not?

23 A. Yes.

24 Q. And who is the mortgagee on the page, if you can  
25 review that for us?

1 A. Option One Mortgage.

2 Q. Okay. And the amount, can you find the amount on  
3 the mortgage?

4 A. Yes.

5 Q. How much is the mortgage for?

6 A. \$315,400.

7 Q. Okay. Now, is that the same amount that was on  
8 the note that you just reviewed?

9 A. Yes.

10 Q. Okay. So do you have a recollection now that you  
11 reviewed this document of signing this mortgage  
12 agreement?

13 A. Yes.

14 Q. Do you understand the effect of signing this  
15 mortgage agreement?

16 A. Yes.

17 Q. What is the effect of your signature on this  
18 mortgage agreement?

19 A. I borrowed money.

20 Q. But isn't it the case that when you signed this  
21 mortgage agreement, you agreed to secure payment of  
22 that loan with a mortgage lien on your property; isn't  
23 that the case?

24 A. Correct, yes.

25 Q. Okay. And you understood that by signing this

1 mortgage agreement that if you didn't make the mortgage  
2 payments, that your mortgagee, here, Option One, could  
3 foreclose on that property? You understood that,  
4 right?

5 A. Yes.

6 Q. Can we agree, Mr. Shakoori, going forward, that  
7 when I say "mortgage loan," I'm talking about this  
8 Option One Mortgage loan?

9 A. Yes.

10 Q. Okay. Thank you.

11 Now, Mr. Shakoori, I'm going to test your memory  
12 here on this mortgage loan a little. When you obtained  
13 the proceeds from the mortgage loan, in other words,  
14 you got money out of this mortgage loan with Option  
15 One, do you recall where the proceeds were paid?

16 A. The other mortgage.

17 Q. Okay. Namely, the Finance America mortgage was  
18 paid off, right?

19 A. I can't see the names. Yes.

20 Q. Okay. Did you receive a cash payment from this  
21 mortgage loan?

22 A. I'm not sure, but I'm sure, yes.

23 Q. What I'm showing you is Plaintiff's Exhibit E  
24 titled "Settlement Statement" at the top.

25 A. Yeah.

1 Q. Is that your signature at the bottom?

2 A. It appears to be, yes.

3 Q. Okay. Then on page 2 of the settlement statement,  
4 is that your signature as well?

5 A. Yes.

6 Q. All right. And then there's an addendum. Is that  
7 your signature?

8 A. Yes.

9 Q. And it says that you've reviewed the HUD-1  
10 settlement statement, it's true and accurate, correct?

11 A. Yes.

12 Q. And you confirmed that you received a copy of the  
13 HUD-1 by signing it?

14 A. I'm sorry. Say that again.

15 Q. You confirmed that you had received a copy of the  
16 HUD-1 by signing this addendum?

17 A. Yes.

18 Q. Okay. Now, if I take you back to the first page  
19 all the way at the bottom, right, do you see Item 303  
20 on the left-hand side? And it says, "Cash to  
21 borrower."

22 Do you see that?

23 A. Yes. It's not clear, but yes.

24 Q. Okay. Does that refresh your recollection as to  
25 what happened with the money that was borrowed beyond

1 what was paid on the prior mortgage lender?

2 A. Yes.

3 Q. So you'll agree with me that you received nearly  
4 \$54,000 in cash from this mortgage loan?

5 A. Yes.

6 Q. What did you do with the money?

7 A. Put it in -- paying bills and building a house, I  
8 believe.

9 Q. Was that a house you were building on the property  
10 or was it on a different property?

11 A. On a different property.

12 Q. Okay. Do you know the address of that other  
13 house?

14 A. I'm not quite sure. It could be somewhere in  
15 Diamond Hill Road.

16 Q. Okay. Did you own that property?

17 A. Yes.

18 Q. Okay.

19 A. Company did.

20 Q. The company did. Okay.

21 Now, at some point in the course of this  
22 mortgage loan, the Option One mortgage loan, you  
23 defaulted on the loan, correct?

24 MR. ENNIS: Objection to the term "default,"  
25 your Honor. I believe that's a legal term. Either

1 delinquent or don't pay, but default is a term of art.  
2 It is the term about a note in the mortgage.

3 THE COURT: Okay. You can rephrase it.

4 MR. BODURTHA: I'll rephrase it.

5 Q. At some point in time, Mr. Shakoori, you stopped  
6 making payments on the mortgage loan, correct?

7 A. At my attorney's advice, the answer is yes.

8 Q. Okay. Can you tell us the first time you failed  
9 to make a monthly mortgage loan payment on the Option  
10 One loan.

11 A. I cannot give you a date or a time, sir.

12 Q. Okay. Did you at any time enter into a  
13 modification on this mortgage loan?

14 A. The answer is yes, at the advice of an attorney.

15 Q. Okay. Do you know when you entered into that  
16 modification agreement?

17 A. The date?

18 Q. Can you give me the year?

19 A. I'm not sure, but my -- do I answer?

20 Q. If you're not sure --

21 THE COURT: If you're not sure, you're not sure.

22 THE WITNESS: Okay. I'm not sure about the time  
23 or the date.

24 Q. Okay. And did you enter into that loan  
25 modification in order to resolve the fact that you had

1 failed to make monthly mortgage loan payments?

2 A. No. I need to correct you. You keep on saying  
3 failed mortgage payment. I did not fail mortgage  
4 payment.

5 Q. Okay. Let me rephrase then.

6 Did you enter into the loan modification  
7 agreement in order to resolve the payments that you had  
8 missed on the mortgage loan?

9 A. Again, I did not miss payments. There was  
10 argument between myself and the mortgage company, and I  
11 hired an attorney. And that attorney on my behalf  
12 contacted Option One. And during this conversation, I  
13 had questions regarding payments; that it was not being  
14 recorded on Option One's document.

15 And my attorney called Option One and said he  
16 wanted to know what's going on. And they suggested  
17 modification which I did not want to sign, but my  
18 attorney said as a good faith we will do this until the  
19 original document and all the paperwork showing where  
20 all the money I sent was going to.

21 Q. Okay. Do you remember signing the mortgage loan  
22 modification agreement?

23 A. Yes, with objection.

24 Q. And how did you know that you were signing the  
25 mortgage loan modification agreement with an objection?

1 A. My attorney Charlie Wick explained and explained  
2 to Option One legal department on a phone call  
3 conversation that my client will sign this, send  
4 monthly payment until they prove where all my payments  
5 were because they did not have accounting of where all  
6 the money I sent was going to.

7 Q. And what your attorney said to Option One was  
8 reduced to a written agreement showing that you were  
9 going to make these modification payments until this  
10 documentation was provided, right?

11 A. Yes. I was making -- I was to make payments such  
12 time Option One provided accounting paperwork and at  
13 some point they did not.

14 Q. Okay. Just to confirm, that whole agreement was  
15 reduced to a writing, a modification agreement, that  
16 you signed?

17 A. Yes.

18 Q. Okay. Let me show you what plaintiff has marked  
19 as Exhibit L. Sorry, wrong exhibit.

20 All right. Mr. Shakoory, I'm going to show you  
21 what's been marked as Exhibit Q, all right. Can you  
22 see that?

23 A. I can read the words "loan modification  
24 agreement."

25 Q. Can you read anything below it?

1 A. No. Very fuzzy.

2 Q. Let me see if I can enlarge it for you.

3 Now can you read it?

4 A. Yes.

5 Q. All right. I'm going to take you to the last page  
6 of this agreement, okay. Actually, it's the  
7 second-to-last page.

8 Is that your signature, Mr. Shakoori?

9 A. Yes.

10 Q. Now I'm going to take you back to the first page  
11 of the agreement.

12 Do you recall signing this agreement?

13 A. Yes.

14 Q. Is this the modification agreement you were just  
15 discussing that you entered into but objected to making  
16 the payments?

17 A. The answer is, yes, I objected to everything.

18 Q. Okay. As you testified, where in the document  
19 does it say that you're making these payments under an  
20 objection?

21 A. I don't know. My attorney handled this.

22 Q. Okay. So you don't actually know for a fact if  
23 those objections that you were just testifying was  
24 actually reduced to a written agreement, do you?

25 A. Actually, yes, it was my attorney, previous

1 attorney, wrote a letter and got a -- letter --

2 Q. Okay.

3 A. -- from Option One.

4 Q. You just testified before that you agreed to a  
5 loan modification under an objection that Option One  
6 provide you with all this information as to where your  
7 payments were made.

8 A. Yeah.

9 Q. And that that agreement was reduced to a writing,  
10 right?

11 A. Yes.

12 Q. Is what I've shown you as Exhibit Q, is that that  
13 writing?

14 A. No.

15 Q. Okay. It's a separate writing?

16 A. Correct.

17 Q. Okay.

18 A. It was a letter sent to my attorney.

19 Q. So it's not included in the actual loan  
20 modification agreement, is it?

21 A. It's not here, no.

22 Q. Why not?

23 A. I have no idea.

24 Q. Okay. If I can turn your attention to page 1 of  
25 this agreement. Are those your initials at the bottom

1 of the page?

2 A. Yes.

3 Q. Okay. And if I blow this up for you, do you see  
4 where it says the parties -- it lists the parties to  
5 the agreement, Mr. Shakoori?

6 A. Where? What number is that?

7 Q. I'm at the top of the page, and it starts, "This  
8 loan modification agreement made as of the first day of  
9 December of 2008."

10 A. I see that.

11 Q. Do you see the parties on there?

12 A. Yes.

13 Q. One of whom is yourself, right?

14 A. That's correct.

15 Q. And the other one is listed as American Home  
16 Mortgage Servicing, Inc., as servicer. Do you see  
17 that?

18 A. I see that.

19 Q. Okay. Earlier you testified that you entered into  
20 a modification agreement with Option One. Is that the  
21 agreement you're talking about here or is that a  
22 different modification agreement?

23 A. American Mortgage, like you just said, it was the  
24 servicer on behalf of Option One.

25 Q. Okay. So your recollection, as you sit here

1 today, is that American Home Servicing, Inc., was the  
2 mortgage loan servicer?

3 A. For Option One, correct, that's what I was told.

4 Q. Okay. And so when you were talking earlier about  
5 the agreement that you entered into with Option One, it  
6 was actually an agreement that you entered into with  
7 American Home Mortgage Servicing as loan servicer for  
8 Option One?

9 A. Correct.

10 Q. Okay. So you will agree with me that in December  
11 of 2008, American Home Mortgage Servicing, Inc., was  
12 your mortgage loan servicer?

13 A. Yes.

14 Q. And you would agree with me that this modification  
15 agreement altered, modified and changed the terms of  
16 the mortgage loan, the July 2003 Option One mortgage  
17 loan, right?

18 A. Yes, with objection, I guess if I'm saying it  
19 correctly.

20 Q. Okay. And your objection is that you had asked  
21 for documents or information from Option One?

22 A. Correct. And American Mortgage.

23 Q. And from American Mortgage?

24 A. The servicer.

25 Q. And it's your testimony that those objections are

1 either not in this agreement but are in a different  
2 letter that your counsel sent to either Option One or  
3 American Home?

4 A. Correct.

5 Q. Okay. As you sit here today, are you objecting or  
6 challenging the validity of this mortgage modification  
7 agreement?

8 A. I need to ask my attorney.

9 Q. That's a question for you. I'll put it another  
10 way.

11 You don't have any basis to object to the  
12 validity of this mortgage modification agreement, do  
13 you?

14 A. I'm sorry. Say it again.

15 Q. You don't have any reason to object to the  
16 validity of this mortgage loan modification agreement,  
17 do you?

18 A. I objected to this from day one.

19 Q. You objected to the modification --

20 A. I was never, ever behind mortgage. The problem  
21 was, as I was sending money to the mortgage company,  
22 they did not have proper paperwork. When I was getting  
23 my monthly statement, the balance would never go down.

24 Q. Okay. When you signed this mortgage loan  
25 modification agreement, do you have an understanding of

1 the payments that you were required to make?

2 A. Yes.

3 Q. Okay. What is your understanding of the payments  
4 that you were required to make under this modified  
5 mortgage loan agreement?

6 A. My attorney said as a good faith let's do this  
7 until we find all the document, and then we will go in  
8 front of a judge and sort this out.

9 Q. Okay.

10 A. And as a good faith by counsel's advisement, I  
11 signed this paperwork.

12 Q. Okay. If I turn your attention to page 6 of this  
13 agreement, it's entitled "Loan Modification Agreement,  
14 Schedule A."

15 Do you see that?

16 A. Yes.

17 Q. All right. Would you agree with me that the new  
18 principal balance on the mortgage loan after this  
19 modification was \$320,760.58?

20 A. That's what it says here, yes.

21 Q. Okay. And you agreed to that modified mortgage  
22 amount when you signed this document, right?

23 A. Again, yes, with -- what's the correct legal term?  
24 Prejudice? I did not want to sign this.

25 Q. Okay. All right.

1 A. I did it as a good faith so we can go forward and  
2 resolve the problem.

3 Q. Okay. Now, if I move down a little on this page,  
4 sir, on page 6 where it says, "New modified payment  
5 amount effective for the payments," do you see that  
6 section?

7 A. Yes.

8 Q. And it says "interest only." Do you see that?

9 A. Yes.

10 Q. And you understood at the time that you entered  
11 into this modification agreement that you would be  
12 making interest-only payments on this loan for a period  
13 of time, correct?

14 A. Correct.

15 Q. All right. And you understood that those  
16 interest-only payments were \$1,336.50, correct?

17 A. Correct.

18 Q. All right. And you understood under the terms of  
19 the modification that you were supposed to make those  
20 payments through December 1, 2013, correct?

21 A. Correct. That's what it says here.

22 THE COURT: All right. Mr. Bodurtha, are you  
23 done with this document?

24 MR. BODURTHA: Yes, I am.

25 THE COURT: Let's take a ten-minute recess.

1 MR. BODURTHA: Thank you.

2 THE CLERK: All rise.

3 (Recess taken)

4 MR. BODURTHA: Your Honor, at this time, I'm  
5 going to ask that Exhibit Q be admitted into evidence  
6 based upon Mr. Shakoori's testimony.

7 THE COURT: Okay. Is there any objection?

8 MR. ENNIS: No objection, your Honor.

9 THE COURT: All right. Q will be full.

10 (Plaintiff's Exhibit Q was admitted in full)

11 Q. Okay. So Mr. Shakoori, so I've moved; I'm over  
12 here now.

13 So just wrapping up on this document, it's fair  
14 to say that as of December of 2008, you understood that  
15 your mortgage loan servicer was American Home Mortgage  
16 Servicing, Inc., correct?

17 A. Yes.

18 Q. Okay. And following execution of the modification  
19 agreement, you made payments to American Home Mortgage  
20 Servicing, Inc., on the modified mortgage loan,  
21 correct?

22 A. Yes.

23 Q. And you sent those payments directly to American  
24 Home Mortgage Servicing, Inc.; is that right?

25 A. Actually, I gave some of it to my attorney. He

1 sent it in.

2 Q. But the payments that you sent in, to the best of  
3 your recollection, those payments were sent to American  
4 Home Mortgage Servicing, Inc., right?

5 A. I guess, yes.

6 Q. Okay. And based upon your recollection, do you  
7 know for how long you made those payments to American  
8 Home Mortgage Servicing, Inc.?

9 MR. ENNIS: Objection, your Honor. This  
10 evidence that he's been presenting has nothing to do  
11 with the basis of this lawsuit, namely, to establish  
12 the identity of the holder of the note and holder of  
13 the mortgage.

14 THE COURT: Well, I totally disagree with that.  
15 This is an equitable claim, and this evidence I think  
16 is relevant to an equitable claim. So the objection is  
17 noted and it's overruled.

18 You may proceed, sir.

19 MR. BODURTHA: Did he answer the last question?

20 THE REPORTER: No, counsel.

21 MR. BODURTHA: Okay. Would you repeat the last  
22 question.

23 (Record read)

24 THE WITNESS: No.

25 Q. Is it -- I'm sorry. Strike that.

1 Do you recall making any mortgage loan payments  
2 after April of 2011?

3 A. I do not recall.

4 Q. Okay. You don't recall specifically the last time  
5 you made a mortgage loan payment on this loan, do you?

6 A. Don't recall the date.

7 Q. Okay. Is it fair to say that the last time you  
8 made the mortgage loan payment was more than ten years  
9 ago?

10 A. Could be.

11 Q. Okay.

12 A. I was told to stop making payments by my attorney  
13 on this loan modification.

14 Q. You haven't made a mortgage loan payment in over  
15 ten years, correct?

16 A. Correct.

17 Q. You haven't paid any property taxes in more than  
18 ten years, correct?

19 A. I have paid some.

20 Q. When did you make those property tax payments?

21 A. I don't know the dates.

22 Q. Do you have records of property tax payments?

23 A. It says right in town who makes the payment.

24 Q. You haven't made any property insurance payments  
25 since April of 2011, have you?

1       A.     That's an incorrect statement. I have been paying  
2     insurance on the house. Automatically comes out of my  
3     checking account.

4       Q.     Okay. Is it fair to say that you've been living  
5     at Ten Rod Road for ten years without making a mortgage  
6     loan payment?

7             MR. ENNIS: Objection; asked and answered, your  
8     Honor.

9             THE COURT: Overruled.

10          THE WITNESS: I'm sorry. Does that mean I have  
11     to answer?

12          THE COURT: Yes.

13          THE WITNESS: Okay. Sorry. What was it?

14       Q.     Is it fair to say that you've lived at the  
15     property located at Ten Rod Road for over ten years  
16     without making a monthly mortgage loan payment?

17       A.     The answer is yes.

18       Q.     And you would concede that during the entirety of  
19     that time you have had a mortgage on the property  
20     securing repayment of the loan that you obtained in  
21     2003, correct?

22       A.     Answer is yes; not to the amount that you claim.

23       Q.     Okay. But you're agreeing with me that you owe  
24     money on a mortgage loan that you haven't paid in over  
25     ten years, right?

1       A.     I thought I just answered that question.

2               THE COURT:   Well, you can answer it again.  
3       There's no harm.

4               THE WITNESS:   So yes.

5       Q.     Okay.  You pursued two bankruptcy petitions  
6       following 2011, right?

7       A.     Yes.

8       Q.     And each of these two bankruptcy petitions you  
9       hired counsel, right?

10      A.     That's correct.

11      Q.     And Mr. Shakoory, all of the information you  
12      provided to your counsel was true and accurate, right?

13      A.     To the best of my knowledge, yes.

14      Q.     To the best of your knowledge.  You gave your  
15      bankruptcy counsel all of the loan account information  
16      that you had in your possession so that that counsel  
17      could file a bankruptcy petition, right?

18      A.     I gave my attorneys the notice of foreclosures.

19      Q.     Okay.  And there was no other information that you  
20      provided to your attorneys?

21      A.     Some statements from other accounts.

22      Q.     And I'm assuming you provided your attorneys a  
23      copy of the mortgage loan modification agreement we  
24      were just discussing, right?

25      A.     Not sure.

1 Q. Not sure. Okay.

2 To the best of your knowledge, all the  
3 information your counsel used to file the bankruptcy  
4 petitions, that was true and accurate, right?

5 A. Whatever I received from the mortgage company, I  
6 gave to my attorney.

7 Q. Okay. Now, in January of 2012, you filed a  
8 bankruptcy petition; is that true, sir?

9 A. I'm sure.

10 Q. Okay. Let me show you what has been identified as  
11 Plaintiff's Exhibit 7. Mr. Shakoori, do you recognize  
12 this document?

13 A. Can you enlarge it, please.

14 Q. Yes.

15 A. Thank you. Yes, that's my name.

16 Q. Okay. Now, if I turn -- sorry. Okay. On page 3  
17 of 8 of Exhibit S, is that your signature on the page?

18 A. I don't see my signature.

19 Q. In the left column under "Voluntary Petition," it  
20 says, "Signature of debtor, Masoud Shakoori-Naminy."

21 A. Right. I see my name typed, but I don't see a  
22 signature.

23 Q. Okay. You have an understanding that at a certain  
24 point in time you were able to countersign documents,  
25 in other words, not using your actual signature but

1 just typing in your signature as well?

2 A. I did not know that.

3 Q. You didn't know that? Do you recall ever  
4 reviewing this petition for bankruptcy?

5 A. I went to my attorney and he explained some stuff.

6 Q. Okay.

7 A. And told me to sign it so I did.

8 Q. And you understood that the signature on this  
9 document represented that you declared under penalty of  
10 perjury that the information provided in the petition  
11 was true and correct; is that the case, sir?

12 A. Sure.

13 Q. Okay. Did your attorney explain that to you, that  
14 you were signing documents under penalties of perjury?

15 A. Yes.

16 Q. And that the truth and accuracy of the information  
17 you provided to the bankruptcy court was essential in  
18 order to obtain bankruptcy relief. You understood  
19 that, right?

20 A. Yes.

21 Q. Let me show you what's been marked as Plaintiff's  
22 Exhibit T. I'm going to blow this up for you, Mr.  
23 Shakoori, so you can see. This document is titled  
24 "Schedule D, Creditors Holding Secured Claims."

25 Do you recall reviewing this document?

1 A. I don't remember.

2 Q. Okay. But you met with your bankruptcy counsel in  
3 order to run through all of the claims that would be  
4 made against you in connection with your bankruptcy,  
5 right?

6 A. Yes.

7 Q. And you provided your attorney the information of  
8 any potential claimant out there, correct?

9 A. Yes.

10 Q. And so your attorney was aware of creditors who  
11 would make claims against you once you filed for  
12 bankruptcy, right?

13 A. Yes.

14 Q. And then based upon that information, your  
15 attorney prepared this Schedule D. Do you recall that  
16 happening?

17 A. Yes.

18 Q. Okay. Do you recall signing the declaration?

19 A. My name is printed.

20 Q. Okay. But you understand that at the time that  
21 you signed this document, you were actually able to  
22 sign it by a backslash backslash signature. You didn't  
23 actually have to put your pen to the paper, right?

24 A. I actually signed this documents in his office,  
25 pen and paper.

1 Q. Okay. Do you consider what I've shown you as  
2 exhibit --

3 A. That is my name.

4 Q. That is your name on this exhibit. And that's  
5 your signature.

6 Do you treat that as your signature, Mr.  
7 Shakoori?

8 A. I guess. Signature to me means I am signing.

9 Q. I understand. Do you understand that by making  
10 this declaration you were stating to the Court under  
11 the penalty of perjury that you read the foregoing  
12 summary of schedules and that they were true and  
13 correct to the best of your knowledge, information and  
14 belief?

15 A. Yes, yes.

16 Q. And you understood that if you made a false  
17 statement or concealed property, that you were subject  
18 to a fine, prison or both.

19 You understood that, right?

20 A. Yes.

21 Q. Now, going back to the first page of this Schedule  
22 D. I want to focus your attention on the first top  
23 section below creditor's name and mailing address.

24 Do you see that?

25 A. Yes.

1 Q. You under creditor number one, you've listed  
2 American, and in parentheses, LaSalle Bank N.A., close  
3 parentheses, right?

4 A. I did not list it. My attorney did.

5 Q. But Mr. Shakoori, you signed this document under  
6 the pains and penalties of perjury.

7 A. Correct.

8 Q. Okay. And by signing this document, you were  
9 saying that this is true and accurate information,  
10 correct?

11 A. Correct.

12 Q. And you put the name American on -- you agreed to  
13 the name American on there because that was American  
14 Home Mortgage Servicing, Inc., your mortgage loan  
15 servicer, right?

16 A. Again, I received a foreclosure with names on it  
17 and I gave it to my attorney.

18 Q. That's not answering my question, Mr. Shakoori.  
19 You put the name American on that document because you  
20 knew -- let me finish my question.

21 THE COURT: Mr. Shakoori, let him finish his  
22 question and then you can answer, okay?

23 THE WITNESS: Yes, your Honor.

24 Q. You agreed to the name American under creditor  
25 number one because you knew that your mortgage loan

1 servicer was American Home Mortgage Servicing, Inc.,  
2 right?

3 A. What day is this? What year is this document?

4 Q. This is filed in connection with your 2012  
5 bankruptcy.

6 A. Yes. They were the servicer.

7 Q. Okay. And you put in parentheses LaSalle Bank  
8 N.A. because you knew that LaSalle Bank N.A. was the  
9 holder of your mortgage, correct?

10 MR. ENNIS: Objection, your Honor. That is  
11 asking him a legal question about the holder of the  
12 mortgage.

13 THE COURT: Overruled. He can answer if he  
14 knows the answer to the question.

15 Go ahead. Answer the question.

16 THE WITNESS: Again, Sam -- I apologize, I don't  
17 know your last name -- you keep on referring to the I  
18 put that in parentheses. I did not know. I'm not an  
19 attorney. I just followed my attorney's advice. So I  
20 gave documents that they asked for, foreclosure  
21 paperwork, and this is what the gentleman typed. And  
22 when I went there, he says these are the names of who  
23 you owe money to and I signed the paperwork.

24 Q. Okay. So the advice of your bankruptcy counsel  
25 was to list LaSalle Bank N.A. as a creditor in your

1 bankruptcy case?

2 A. My attorney did that, correct.

3 Q. And on his advice, you signed this Schedule D?

4 A. That's correct.

5 Q. Under the penalties and pains of perjury?

6 A. Yes.

7 Q. Okay. Now in the next column over where it says  
8 "Date Claim Was Incurred," do you see that?

9 A. To the right?

10 Q. Yes, to the right.

11 A. Okay.

12 Q. And it recites that the mortgage -- I'm sorry. It  
13 states that the claim opened in July 1, 2003. Do you  
14 see that?

15 A. Yes.

16 Q. And then below it says first mortgage, right?

17 A. Yes.

18 Q. And it also says below that primary residence of  
19 debtor located at 1541 Ten Rod Road in Exeter, Rhode  
20 Island, right?

21 A. Correct.

22 Q. This line in this Schedule D, this is identifying  
23 the Option One mortgage loan, right?

24 A. Okay.

25 Q. It is? That's your testimony; you have identified

1 the Option One mortgage loan in that box?

2 A. Yes.

3 Q. Okay. Now, in one box over where it says "Amount  
4 of Claim Without Deducting Value of Collateral," the  
5 number written is \$320,760, right?

6 A. Okay.

7 Q. You see that?

8 A. Yes.

9 Q. And you would agree with me that that's the amount  
10 that was in the mortgage loan modification agreement  
11 you signed with American Home Mortgage Servicing in  
12 2008?

13 A. Yes.

14 Q. Okay. So is it fair to say, Mr. Shakoori, that  
15 this first level line for the creditor's name, this is  
16 identifying the mortgage loan that you executed in  
17 favor of Option One Mortgage?

18 A. If you say so.

19 Q. Well, I'm asking you. Do you agree with me --

20 A. I did sign this document, yes.

21 Q. You did. And by signing it, you agreed that this  
22 was the mortgage loan that you originated with Option  
23 One?

24 A. Yes.

25 Q. Okay. Now, it's a little bit difficult to see,

1 but if you look in between the columns, between "Amount  
2 of Claim" and "Date Claim was Incurred," do you see  
3 those three headings?

4 A. Which column are you referring to?

5 Q. In between the column "Amount of Claim Without  
6 Deducting Value of Collateral" and the column "Date  
7 Claim was Incurred," there are three small narrow  
8 columns.

9 You see those, right?

10 A. Okay.

11 Q. And one column is listed as "Contingent," another  
12 one is "Unliquidated" and another is "Disputed."

13 Do you see those?

14 A. Yes.

15 Q. Okay. You didn't check the box for "Disputed,"  
16 did you?

17 A. I don't know the law. My attorney prepare this.

18 Q. Your attorney prepared it and you signed it,  
19 sir --

20 A. Correct.

21 Q. -- but you didn't check the box for "Disputed" on  
22 the loan?

23 A. Okay.

24 Q. That's true, right?

25 A. Yes, I don't see a check there.

1 Q. Despite the fact that you previously testified  
2 that you were disputing portions of this loan, right?

3 A. Yes.

4 Q. But as far as you were communicating to the  
5 bankruptcy court on your Schedule D of creditors, you  
6 were not disputing this loan?

7 A. I'm sure I'll explain everything to my attorney,  
8 but I signed it.

9 Q. Okay. So you weren't disputing the identification  
10 of creditor number one as American and in parentheses  
11 LaSalle Bank N.A.?

12 MR. ENNIS: Your Honor, another objection. My  
13 brother knows that Bank of America took over LaSalle  
14 Bank N.A. in October of 2007 and that LaSalle Bank N.A.  
15 was no longer the trustee of this trust after that  
16 date. This is five years later.

17 THE COURT: Okay. That may all be true, but  
18 that has really nothing to do with what he put on the  
19 form as his recitation of what his debts were. So that  
20 may or may not be relevant, I don't think it is, but if  
21 that's an objection, it's overruled.

22 MR. BODURTHA: Is there a question pending?

23 (Record read)

24 Q. Mr. Shakoori?

25 A. No.

1 Q. Thank you. All right. Now I'm going to turn your  
2 attention to Plaintiff's Exhibit U. Now, I'm going to  
3 go to the second page of the exhibit.

4 Do you see where I'm at, Mr. Shakoori?

5 A. At the bottom?

6 Q. Yes.

7 A. Uh-huh.

8 Q. You see the writing where you declare under  
9 penalty of perjury that the above indicates your  
10 intention as to any property of your estate securing a  
11 debt and/or personal property subject to an unexpired  
12 lease, correct?

13 A. Yes.

14 Q. Now, I'm anticipating this, but you're going to  
15 tell me that your bankruptcy counsel prepared this  
16 document, right?

17 A. Correct.

18 Q. But you reviewed these documents with your  
19 bankruptcy counsel before they were filed with the  
20 court, right?

21 A. Yes.

22 Q. All right. And that is your signature on that  
23 page, correct?

24 A. Yes.

25 Q. Now, going back to the prior page, this is a

1 Chapter 7, Individual Debtor's Statement of Intention.  
2 On this statement, you have listed under property  
3 number one a property located at 1541 Ten Rod Road.

4 Do you see that?

5 A. Yes.

6 Q. And then in the box next to that, you've listed  
7 creditor's name, right?

8 A. The attorney did, yes.

9 Q. All right. The attorney listed the creditor's  
10 name American, and in parentheses, LaSalle Bank N.A.,  
11 close parentheses, right?

12 A. Yes.

13 Q. And that's because American Home Mortgage  
14 Servicing was your servicer, correct?

15 A. Yes.

16 Q. And we can dispute it here for some reason, but  
17 it's also because LaSalle Bank N.A. was the holder of  
18 the mortgage, correct?

19 MR. ENNIS: Objection. That is a difference  
20 because I've tried to define as indicated in the  
21 bankruptcy creditor in claim. It doesn't mean it's the  
22 holder, your Honor. And he's asking a legal question  
23 relating to holding the assets.

24 THE COURT: All right. Well, I'll ask Mr.  
25 Bodurtha to rephrase the question.

1 MR. BODURTHA: Absolutely, your Honor.

2 Q. And to the best of your knowledge, your bankruptcy  
3 counsel listed LaSalle Bank N.A. because LaSalle was  
4 one of your creditors, correct?

5 A. I guess, correct.

6 Q. Okay. And the purpose of this -- do you know the  
7 purpose of this statement, Mr. Shakoori?

8 A. I have -- can you tell me who filed this  
9 paperwork, which attorney? I don't see it here.

10 Q. Well, I can tell you, Mr. Shakoori, that I believe  
11 this bankruptcy was filed by an attorney Dawn M.  
12 Thurston.

13 Do you recall working with Dawn?

14 A. Yes.

15 Q. Okay. And do you recall meeting with Ms. Thurston  
16 in order to review and sign these documents?

17 A. At some point, yes, and then I was referred to  
18 another attorney.

19 Q. Okay. In the context of this individual statement  
20 of intention, is everything in this statement, although  
21 prepared by your lawyer, true and accurate?

22 A. I'm assuming, yes.

23 Q. Okay. In the course of the 2012 bankruptcy, you  
24 pursued loss mitigation with the creditor that is  
25 referred to as American, open parentheses, LaSalle Bank

1 N.A., close parentheses; is that right?

2 A. That's what it says here, yes.

3 Q. Okay. Because the reality is that you were in  
4 default on the mortgage loan and you wanted a  
5 modification, right?

6 A. I was not in default of the loan. That is an  
7 incorrect statement.

8 Q. Okay.

9 A. We had dispute.

10 Q. All right. Well, there was a dispute over your  
11 loan, but you had not made monthly loan payments and  
12 you needed to modify the loan, right?

13 A. Yes.

14 Q. Okay. And so you or your lawyer filed this  
15 statement of intention in your bankruptcy proceedings  
16 in order to initiate a loan modification negotiation,  
17 right?

18 A. Yes.

19 Q. Do you recall the course of that loan modification  
20 negotiation?

21 A. Somewhat, yes.

22 Q. Do you recall providing documents to your lawyer  
23 so that the modification could be reviewed?

24 A. Actually, my lawyer gave me documents.

25 Q. Okay. Do you recall that your lawyer was working

1 with another attorney who represented creditor number  
2 one?

3 A. I'm sorry?

4 Q. Do you recall that your lawyer was working with a  
5 lawyer who represented the creditor on this statement?

6 A. My understanding was she was talking directly to  
7 the mortgage company. That's what I was told.

8 Q. Mr. Shakoori, I'm going to show you what's marked  
9 as Plaintiff's Exhibit V. Now, in response to a loss  
10 mitigation request, your mortgage holder provided you  
11 information, right?

12 MR. ENNIS: Objection, your Honor. Once again,  
13 use of the word "holder."

14 THE COURT: Well, so can you just --

15 MR. BODURTHA: I'm happy to rephrase it.

16 THE COURT: -- somehow rephrase your question  
17 and deal with that.

18 Q. Mr. Shakoori, in response to your request for loss  
19 mitigation, the creditor provided you with information,  
20 correct?

21 A. What do you mean by "information"?

22 Q. Well, they entered into a negotiation with you on  
23 a loan modification, correct?

24 A. With my attorney, yes.

25 Q. But you were involved in that loan modification

1 negotiation, right?

2 A. Actually, she would just call me from time to time  
3 telling me what's going on so ...

4 Q. Okay. So you gave her the authority to modify the  
5 mortgage loan that you originated with Option One?

6 A. I guess.

7 Q. And she communicated information that she had  
8 received from the creditor as part of these  
9 negotiations, correct?

10 A. Yes. Her and her partner, yes.

11 Q. Okay. And did you receive any -- strike that.

12 And what can you tell me about the course of  
13 those loan modification negotiations?

14 A. I was contacted by the two attorneys saying that  
15 they cannot find accounting, and they proposed they  
16 would give me a \$200,000 loan for 2 percent for 30  
17 years fixed.

18 Q. Okay. And you accepted that offer?

19 A. I verbally accepted that offer, and when I showed  
20 up at the office, whoever made that offer rescinded,  
21 took it back.

22 Q. And what office did you show up at in order to  
23 accept that offer?

24 A. Dawn Thurston and Tom Howard attorney, Aurora Law.

25 Q. To the best of your knowledge, this negotiation,

1 the \$200,000 at 2 percent, was reported back to the  
2 bankruptcy court, right?

3 A. I have no idea. I have no idea. I can't answer  
4 that. I don't know.

5 Q. Well, you understood that you were under a loss  
6 mitigation plan with --

7 A. They took the loan back, so they rescinded the  
8 offer.

9 Q. They rescinded the offer.

10 A. After I said yes, I was supposed to sign and they  
11 never send the document.

12 Q. When you say "they," to whom are you referring?

13 A. The mortgage company, whoever my two attorneys  
14 talked to.

15 Q. Do you understand that LaSalle Bank retained  
16 counsel in the bankruptcy proceeding in order to  
17 negotiate this loan modification?

18 MR. ENNIS: Objection, your Honor. My brother  
19 is making a false statement that LaSalle Bank retained  
20 anybody. They did not exist in 2012.

21 THE COURT: All right. Well, overruled. You  
22 can clarify if you think it's necessary, but the  
23 objection is overruled.

24 Q. Mr. Shakoori, did a trust referred to as LaSalle  
25 Bank National Association, as Trustee for Structured

1 Asset Securities Corporation, Structured Asset  
2 Investment Loan Trust, Pass-Through Certificates,  
3 Series 2003-BC11 retain counsel in your bankruptcy  
4 proceeding in order to negotiate a loan modification?

5 A. As far as I know, it was Option One and American  
6 mortgage. So all these other names I have never heard  
7 of.

8 Q. In the course of your bankruptcy proceeding, you  
9 never saw a document or a pleading or a filing that was  
10 generated by the trust that I just identified?

11 MR. ENNIS: Once again, the same objection as I  
12 raised originally, your Honor. The current status --

13 THE COURT: All right. I get it. He's  
14 rephrased it, and your objection is noted. I've  
15 overruled it so proceed.

16 THE WITNESS: I'm sorry, sir.

17 Q. Mr. Shakoori, you've never received any documents  
18 or information from the trust that I just identified  
19 through the course of these loan modification  
20 negotiations?

21 A. Whatever I received I handed to my attorney. I  
22 don't know the law. And whatever they said, I  
23 followed. It's just as plain as it gets.

24 Q. So let me understand this. You were going to sign  
25 a loan modification agreement for \$200,000 at 2

1 percent?

2 A. That's correct.

3 Q. And that required you to go to an attorney's  
4 office, correct?

5 A. My two attorneys were already working, yes.

6 Q. Okay. So you had to go to an office in order to  
7 sign these documents?

8 A. I received a phone call that this is the offer  
9 they gave and I accepted.

10 Q. Okay. And before you accepted, you reviewed  
11 documents at least that indicated to you what the offer  
12 was, correct?

13 A. No. There was no offer. When I went to the  
14 office, like I said, they decided to take the offer  
15 back. That's the only explanation I had.

16 Q. So how did you know there was an offer? It was a  
17 phone call from your attorney?

18 A. Both my attorneys called, and they said they have  
19 an offer; can you come to the office. By the time I  
20 went to the office, apparently someone made a decision  
21 not to go through with it.

22 Q. All right. So you never reviewed or received any  
23 documents in connection with this offer?

24 A. Correct.

25 Q. Okay. And you never received any documents that

1 came from your mortgage lender through the course of  
2 this bankruptcy proceeding?

3 A. No.

4 Q. And you didn't know where to send the documents  
5 that you had prepared in order to negotiate the loan  
6 mod?

7 A. Where to send it?

8 Q. Yes.

9 A. Again, I received a phone call from two attorneys.  
10 So when I went to the office, there was nothing for me  
11 to read. I was told they took it back.

12 Q. So it's fair to say then that the \$200,000  
13 modification offer was never actually extended to you?

14 A. Not to me, no. My attorneys on my behalf. To my  
15 attorneys.

16 Q. Okay. Were you aware that your attorneys were  
17 filing documents with the Rhode Island Bankruptcy Court  
18 on the status of your loss mitigation efforts?

19 A. Yes. She said she was going to do that.

20 Q. And did she discuss those filings before she filed  
21 them with the court with you?

22 A. Yes.

23 Q. By discussing those documents, did you have an  
24 understanding of with whom she was negotiating?

25 A. She told me she was negotiating with Option One

1 and American Mortgage.

2 Q. Would the documents that she filed with the  
3 bankruptcy court, would that reflect with whom she was  
4 negotiating a loan modification?

5 A. I can't answer who she's -- I wasn't in her  
6 office.

7 Q. Mr. Shakoori, showing you what's marked as Exhibit  
8 W. This is a bankruptcy loss mitigation status report  
9 that was filed by Dawn M. Vigue and Peter M. Lawton.

10 Ms. Vigue was your attorney, right?

11 A. Dawn, yes. I don't know who Peter is, yes.

12 Q. But Ms. Vigue was your lawyer?

13 A. Correct. And Tom Howard.

14 Q. Okay. And in the course of these negotiations for  
15 loss mitigation, those were occurring in 2012, right?

16 A. I guess.

17 Q. Okay. And we had just talked about how you would  
18 consult with your lawyer about the status of loss  
19 mitigation negotiations, right?

20 A. Yes.

21 Q. And I believe you testified that you understood  
22 she was filing status reports with the Court, right?

23 A. Yes.

24 Q. Okay. And did she show you this particular status  
25 report?

1 A. I do not recall.

2 Q. Okay. So she never told you that she was  
3 negotiating with this trust on a loan modification?

4 A. She always referred to it as American Mortgage or  
5 Option One.

6 Q. So she never referred to your creditor as LaSalle  
7 Bank?

8 A. I don't recall.

9 Q. Despite the fact that you listed --

10 A. In one of the paperworks when I reviewed, I have  
11 mentioned to her why isn't it saying Option One? And  
12 she says the legal name what I found in documents are  
13 this.

14 Q. Okay.

15 A. I didn't question her.

16 Q. So your attorney confirmed for you the legal name  
17 in the documents that were being used to negotiate the  
18 loan modification?

19 A. That's what she said.

20 Q. Okay. And the loan modification negotiations  
21 never resulted in a modification of your loan, right?

22 A. That's correct, they didn't.

23 Q. And let me ask you this, Mr. Shakoori. You never  
24 filed an objection to the mortgage or the amount you  
25 owed or the validity of the mortgage holder in

1 connection with this 2012 bankruptcy petition, did you?

2 A. Can you explain that.

3 Q. I'm sorry if that was confusing.

4 You never filed an objection to the holder of  
5 your mortgage in connection with your 2012 bankruptcy  
6 petition?

7 A. I was under the impression my attorney did on the  
8 amount.

9 Q. On the amount.

10 A. All of these arguments is about the amount, yes.

11 Q. So the argument isn't about who actually holds the  
12 mortgage; it's about the amount?

13 MR. ENNIS: Objection to the form of the  
14 question. Doesn't specify a particular time. Is he  
15 referring to this bankruptcy?

16 THE COURT: I'll sustain the objection.  
17 Rephrase it in terms of the time.

18 MR. BODURTHA: Yes, your Honor.

19 Q. In the 2012 bankruptcy, your objection was not to  
20 the holder of the mortgage; it was to the amount owed  
21 on the mortgage.

22 MR. ENNIS: Your Honor, he's already established  
23 there was no objection. There's no adversary  
24 proceeding filed in this case which is the only manner  
25 in which a matter can be objected to in the bankruptcy

1 court. He clearly did not file an adversary  
2 proceeding.

3 THE COURT: All right. That may be true, but I  
4 think this is a more general question that he's asking  
5 so I'm going to overrule the objection.

6 Why don't you rephrase your question and ask it  
7 again, please.

8 MR. BODURTHA: Yes, sir.

9 Q. Mr. Shakoori, to the best of your knowledge, you  
10 never filed an objection in the 2012 bankruptcy  
11 proceeding to the holder of your mortgage?

12 A. I was under the impression my lawyer was handling  
13 this, sir.

14 Q. Okay, sir. But you've never seen, and to the best  
15 of your knowledge, no objection to the holder of the  
16 mortgage was filed in connection with your 2012  
17 bankruptcy proceeding?

18 A. I have never seen paperwork, if that's what you're  
19 asking me.

20 Q. Okay. How did the 2012 bankruptcy petition work  
21 out? Did you receive a discharge or dismissal? What  
22 happened to it?

23 A. I don't think it was discharged.

24 Q. Okay. To the best of your knowledge, the  
25 bankruptcy case was dismissed?

1 A. Yes. The other attorney couldn't come up with  
2 documents from my understanding.

3 Q. Can you clarify that for me. What other attorney  
4 couldn't come up with documents?

5 A. When I got served with the bankruptcy, when I  
6 hired these two attorneys, I explained the situation  
7 and they asked for documents.

8 Q. Okay. And that was why your case was dismissed?

9 A. No. I don't know why it was dismissed.

10 Q. Okay. But you would agree with me that the 2012  
11 bankruptcy petition was dismissed without a discharge?

12 A. Yes.

13 Q. All right. Now, during that time, you still were  
14 not making monthly mortgage loan payments, right?

15 A. Correct. We were in dispute, yes.

16 Q. Okay. And you continued to, I'll say, withhold  
17 monthly mortgage loan payments until you filed another  
18 bankruptcy petition, right?

19 A. Yes.

20 Q. All right. Now, that bankruptcy petition, it was  
21 filed in 2015; is that true?

22 A. Yes.

23 Q. And once again, all of the information that you  
24 provided to your bankruptcy counsel was true and  
25 accurate, right?

1 A. Yes.

2 Q. Okay.

3 A. Actually, the two attorneys gave it to the third  
4 attorney.

5 Q. Okay.

6 A. All the documents.

7 Q. So your third attorney relied upon the same  
8 documents and information that you gave to the two  
9 attorneys before in order to file your 2015 bankruptcy?

10 A. Yes. Plus a new foreclosure notice by another  
11 attorney.

12 Q. Okay. So you were filing bankruptcies every time  
13 you received a foreclosure notice?

14 A. I was not. I was hiring an attorney, and I would  
15 listen to their legal advice.

16 Q. Okay. I'll rephrase.

17 So whenever you were about to be foreclosed on,  
18 you would hire an attorney and they would pursue relief  
19 in the bankruptcy court for you?

20 A. No. I always had the attorneys.

21 Q. Okay.

22 A. The company were constantly changing attorneys,  
23 coming after me, because the previous attorneys Option  
24 One hired could not come up with all the documents I  
25 asked for.

1 Q. Okay. So let me show you Exhibit AA. Mr.  
2 Shakoori, what I've marked as Exhibit AA, I'm going to  
3 have you take a quick look at the second page.

4 Do you see under Exhibit B it lists the attorney  
5 for the petitioner?

6 A. Christopher, yes.

7 Q. And that was the attorney you retained for the  
8 2015 bankruptcy?

9 A. Yes.

10 Q. And the attorneys we referred to before had given  
11 your documents and information to Christopher, right?

12 A. That's correct. That's how I actually met  
13 Christopher. They brought me to his office.

14 Q. Okay. And if I turn your attention to the  
15 following page, page 4, once again, under the voluntary  
16 petition, there's your name, your signature, right?

17 A. Yes.

18 Q. Masoud Shakoori-Naminy, signed on April 30, 2015,  
19 right?

20 A. That's correct, yes.

21 Q. You declared under the penalty of perjury that the  
22 information provided in this petition is true and  
23 correct, right?

24 A. Yes.

25 Q. Okay. Now, let me show you Exhibit BB. This is

1 going to look familiar.

2 All right. This is the Schedule D, Creditors  
3 Holding Secured Claims, from your 2015 bankruptcy  
4 proceeding. Do you see that?

5 A. Yes.

6 Q. All right. I'm going to turn your attention to  
7 this page, page 52 of 74 in the filing, and that's your  
8 declaration concerning debtor schedules.

9 Do you see that?

10 A. Yes.

11 Q. Once again, you provided this information under  
12 penalty of perjury that all of the summary and  
13 schedules were true and correct to the best of your  
14 knowledge, information and belief, correct?

15 A. Yes.

16 Q. And you knew that by signing that, the penalty for  
17 making a false statement or concealing property was a  
18 fine or imprisonment or both, right?

19 A. Yes.

20 Q. Now, turning your attention back to the first  
21 page. Now, you see these similar columns to what we  
22 looked at in your 2012 bankruptcy.

23 So let's run through them, okay?

24 A. Okay.

25 Q. All right. Under creditor's name, you listed

1 Ocwen Mortgage Company, right?

2 A. Yes.

3 Q. Now, you listed Ocwen because Ocwen was your  
4 mortgage loan servicer, right?

5 A. Yes. The attorney listed, not I.

6 Q. But the attorney listed it based upon the  
7 information that you provided him, right?

8 A. That's correct.

9 Q. And you signed this Schedule D under the penalties  
10 of perjury, right?

11 A. That's correct.

12 Q. So you knew at the time that you signed this  
13 document that Ocwen Mortgage Servicing was your  
14 mortgage loan servicer, right?

15 A. That's correct.

16 Q. Okay. Now, in the second column, again, you have  
17 the date claim was incurred, nature of lien and  
18 description of valued property.

19 Do you see that?

20 A. Yes.

21 Q. And you list 7-1-2003, right?

22 A. Yes.

23 Q. You also list first mortgage and you list the  
24 property located at 1541 Ten Rod Road, right?

25 A. Yes.

1 Q. Okay. Is it fair to say that the information you  
2 provided to your counsel identifies this claim as the  
3 Option One mortgage loan?

4 A. Yes.

5 Q. Okay. Now, if I turn your attention to the amount  
6 of claim, a few columns over, it reads \$320,760.

7 Do you see that, sir?

8 A. I see that.

9 Q. And that is the same amount that you listed in  
10 your 2012 petition, correct?

11 A. Yes.

12 Q. And it's also the same amount that you had in your  
13 2008 loan modification agreement with American Home,  
14 correct?

15 A. Yes.

16 Q. All right. So it's fair to say that through this  
17 section in your Schedule D, you have identified the  
18 Option One mortgage loan, right?

19 A. Yes.

20 Q. And you've identified the servicer because you  
21 knew the servicer was Ocwen Mortgage, right?

22 A. Yes.

23 Q. Now, unlike the 2012 bankruptcy, in this one, your  
24 lawyer checked the box "Disputed."

25 Do you see that?

1 A. Yes.

2 Q. Okay. Do you have an understanding of why that  
3 "Disputed" box was checked?

4 MR. ENNIS: Objection, your Honor.

5 THE COURT: Overruled. He can answer.

6 THE WITNESS: Can you clarify your question,  
7 please.

8 Q. Sure. Do you have an understanding, as you sit  
9 here today, as to why your lawyer checked the box  
10 "Disputed"?

11 MR. ENNIS: Your Honor, to the extent --

12 THE COURT: Overruled. No more speaking. I  
13 want him to answer that question.

14 THE WITNESS: I explained all my problems to him  
15 so he put it disputed. I'm disputing with that figure.

16 Q. You're disputing the amount?

17 A. All this argument is dispute -- about how much I  
18 owe the mortgage company.

19 Q. Okay. So you weren't disputing who was holding  
20 your mortgage loan?

21 A. All my fight, as far as I know, has been Option  
22 One and whoever else was handling their servicing after  
23 they filed bankruptcy.

24 Q. Okay. But the question I'm asking you, I'm trying  
25 to isolate what the dispute was over, you're testifying

1 that your dispute was to the amount you owed?

2 A. Correct.

3 Q. Okay. Mr. Shakoori, showing you what's been  
4 marked as Plaintiff's Exhibit CC. Now, again, this is  
5 similar to the 2012 bankruptcy, but we're in the 2015.  
6 And I'm showing you the Individual Debtor's Statement  
7 of Intention.

8 Do you see that on the screen?

9 A. Yes.

10 Q. All right. On page 2, you see once again your  
11 signature, right?

12 A. Yes.

13 Q. Your declaration under penalty of perjury; that  
14 the above indicates your intention as to property?

15 A. Yes, yes.

16 Q. Sorry if I'm belaboring the point.

17 A. No, no.

18 Q. So on the first page, you identified property  
19 number one. Do you see that?

20 A. Yes.

21 Q. And you list the real estate located at 1541 Ten  
22 Rod Road?

23 A. Can you enlarge it, please.

24 Q. Yes.

25 A. Thank you.

1 Q. Sorry.

2 A. No problem.

3 Q. Is that good?

4 A. Sure.

5 Q. That's big. Okay. You list the real estate  
6 located at 1541 Ten Rod Road, Exeter, Rhode Island,  
7 right?

8 A. Correct.

9 Q. And you list under creditor's name, Ocwen Mortgage  
10 Company, correct?

11 A. I don't see.

12 Q. If you go on the left side under property number  
13 one, it says creditor's name.

14 A. Yes.

15 Q. And the reason you listed Ocwen Mortgage Company  
16 is that that was your mortgage loan servicer, right?

17 A. Correct.

18 Q. And you identified your interest in retaining the  
19 property, correct?

20 A. Correct.

21 Q. And you state under "Other" that debtor will  
22 retain collateral and continue to make regular  
23 payments, correct?

24 A. Correct.

25 Q. But isn't it the case that you weren't making

1 regular payments at this time?

2 A. To whom was I going to make regular payment when  
3 there is a major accounting issue?

4 Q. Okay.

5 A. I kept sending money and my balance remained the  
6 same.

7 Q. Okay.

8 A. So at one point my attorney says we're not going  
9 to send money until they send document and we go in  
10 front of a judge.

11 Q. Okay. So you wanted to make regular payments.

12 A. Absolutely.

13 Q. But you didn't have, according to your testimony,  
14 an accounting?

15 A. Correct.

16 Q. So there was a dispute over the amount that you  
17 had to pay?

18 A. Absolutely.

19 Q. All right. Thank you. Now, turning your  
20 attention to Plaintiff's Exhibit DD.

21 Have you ever seen this document, Mr. Shakoori?

22 A. I'm sure.

23 Q. Okay. You recall that in this 2015 bankruptcy you  
24 ultimately received a discharge of debts.

25 Do you recall that?

1 A. Correct, yes.

2 Q. Did your attorneys explain to you the significance  
3 of that discharge?

4 A. Yes.

5 Q. And what is your understanding of that discharge?

6 A. That I'm not responsible for that debt.

7 Q. Okay. And did your attorneys explain to you that  
8 although you're not responsible for the debts, that to  
9 the extent that there are debts on property, those  
10 still may be owed, right?

11 A. Yes.

12 Q. Okay. So is it fair to say that you understood  
13 that the mortgage remained on the Ten Rod Road  
14 property, right?

15 A. Yes. But did not know how much, what the correct  
16 amount is.

17 Q. We have been through that, I understand. You  
18 didn't know the amount, but you understood that the  
19 mortgage was going to survive the bankruptcy and remain  
20 on the property, right?

21 A. Yes.

22 Q. And that your creditor, the mortgage holder, would  
23 have the opportunity to foreclose on that property in  
24 order to collect on the debt?

25 A. That was never explained to me.

1 Q. Okay.

2 A. My understanding was it was discharged, that they  
3 could not come foreclose; however, our intention with  
4 my attorney to come to the table and establish the  
5 correct amount.

6 Q. Okay.

7 A. Which your client up to this day has refused to  
8 give the correct amount.

9 Q. Okay.

10 A. Or a correct accounting.

11 Q. So let me ask you this, Mr. Shakoori. Providing  
12 you with the correct accounting in your mind would  
13 resolve the entirety of this dispute?

14 MR. ENNIS: Objection. That's a legal question,  
15 your Honor.

16 THE COURT: Overruled.

17 THE WITNESS: Wasn't that the purpose of before  
18 we came to the Court so we could resolve?

19 Q. I'm not answering questions. I'm asking you the  
20 questions.

21 A. I know that. I clearly understand that.

22 THE COURT: Hang on a second. Don't talk over  
23 each other, all right. For the court reporter's sake,  
24 let him finish his question, then you answer his  
25 finish.

1           Now the last question asked, do you want to  
2       restate it?

3           MR. BODURTHA: I'll restate. Thank you, your  
4       Honor. Apologies for that.

5       Q.    So as you sit here today, the source of your  
6       dispute is the amount of money that you owe on the  
7       mortgage?

8       A.    Yes.

9       Q.    And the dispute can be resolved by providing you  
10      with an accounting of the loan, right?

11      A.    With a proper accounting of the note, yes.

12      Q.    A proper accounting of the loan?

13      A.    Correct.

14      Q.    Okay. And there's no doubt in your mind as you  
15      sit here today that you've discharged your personal  
16      liability for the mortgage loan, right?

17      A.    That's correct.

18      Q.    That happened as a result of the 2015 bankruptcy?

19      A.    Correct.

20      Q.    And there's no doubt in your mind that when you  
21      got that discharge order, that Ocwen Loan Servicing,  
22      Ocwen Mortgage Company, was your mortgage loan  
23      servicer?

24      A.    Yes.

25      Q.    Is it reasonable to assume that in the ten years

1 that you haven't made monthly mortgage loan payments  
2 that the holder of your mortgage is going to try to  
3 foreclose on the property? Is that reasonable?

4 A. No.

5 Q. It's not?

6 A. No.

7 Q. So you would expect that you can continue to avoid  
8 mortgage payments and not be the subject of  
9 foreclosure?

10 A. That's not what I said, no.

11 Q. Okay. Can you explain to me your reasoning here.

12 A. Sure. As a cooperation, when they give loans to  
13 other people to purchase home or refinance, they're  
14 obligated to show me my monthly payment; how much goes  
15 for interest, how much goes towards principal and what  
16 I owe.

17 Q. Okay.

18 A. Your client has failed since 2008, okay. Six  
19 attorneys have asked for all of this, and they have  
20 failed over and over and over again.

21 Q. Okay. Let me ask you this, Mr. Shakoori. Other  
22 than the entities that we've discussed today -- we've  
23 talked about American Home, Option One, we talked about  
24 this trust, we talked about Ocwen, all right -- other  
25 than those entities, has there been any other entity

1 that has written you a letter demanding collection of  
2 this mortgage debt?

3 A. Besides the other people?

4 Q. Besides the entities we've talked about, has there  
5 been any other entity that's tried to collect on this  
6 debt?

7 A. I receive letters, used to receive letters all the  
8 time, from at least 20 attorneys. You ask a question,  
9 I'm answering you, okay.

10 Q. I'm not asking you about attorneys; I'm asking you  
11 about companies, entities.

12 Have there been any other entities beyond the  
13 ones that we have discussed today that have attempted  
14 to collect this debt, this Option One mortgage loan  
15 against you?

16 A. Whatever letters I received, I brought it to my  
17 attorneys.

18 Q. Okay. Let me ask it to you in a different way.  
19 You haven't received a collection letter or a demand  
20 letter from any entity, not lawyers, any entity other  
21 than the ones we've discussed today?

22 A. No.

23 Q. And you haven't received any foreclosure notices  
24 from any entity other than the ones we've discussed  
25 today?

1 A. Haven't received it since you filed the last one.

2 Q. Okay. And you don't have any other facts or  
3 information to show that there is an entity other than  
4 the ones that we discussed today that actually owns  
5 your mortgage loan, right?

6 A. Explain that one more time, please.

7 Q. Sure. We've discussed several entities today.  
8 We've discussed servicers, we've discussed this trust.

9 You don't know of any other entities that would  
10 have the right or that have contacted you on the  
11 foreclosure of this mortgage loan, right?

12 A. American mortgage.

13 Q. Okay.

14 A. Ocwen.

15 Q. Okay.

16 A. And all the other attorneys, okay.

17 Q. Yes.

18 A. Claim.

19 Q. Those are the ones you know of, to the best of  
20 your knowledge?

21 A. From -- yes.

22 Q. And you've received nothing else from any other  
23 entity concerning foreclosure of that mortgage?

24 A. The only thing I received was from you with  
25 different names. I don't know if I'm making that clear

1 or not.

2 Q. When you say "different names," to what are you  
3 referring?

4 A. Every time someone send us a letter, okay, it  
5 would have an attorney's name on behalf of this person  
6 claiming you owe us money, and I would bring it to my  
7 attorneys.

8 Q. When you're saying "different names," you're  
9 talking about different attorneys that these different  
10 entities had hired, right?

11 A. Different attorneys and sometimes different names.  
12 Like I can't remember. There was one bank claimed I  
13 owed them money. When I called and I said show me  
14 documents, I never heard back from them again. And I  
15 brought that letter to my attorney, Dawn and Howard.

16 Q. But as you sit here today, you can't recall any  
17 other entity other than the ones we've discussed?

18 A. Correct. That's a long time ago.

19 MR. BODURTHA: I have no other questions subject  
20 to redirect.

21 THE COURT: Okay. Thank you.

22 Mr. Ennis.

23 CROSS-EXAMINATION

24 BY MR. ENNIS:

25 Q. Mr. Shakoori, do you recall when the last -- what

1 was the last time you received a mortgage statement  
2 from any loan servicer?

3 A. I think after the first bankruptcy no one has sent  
4 me anything.

5 Q. So is it fair to say for the past almost ten years  
6 you have not received a monthly periodic statement from  
7 any loan servicer in regard to this loan?

8 A. 100 percent truth, yes.

9 Q. Now, I understand the current servicer is PHH  
10 Mortgage.

11 A. I have no idea.

12 Q. Have you ever received any type of statement or  
13 documentation from PHH Mortgage?

14 A. No. If I have, you would have had it already.

15 Q. Okay. Have you ever received any periodic  
16 statement from Ocwen Loan Servicing?

17 A. No.

18 MR. ENNIS: Okay. Just a moment, your Honor.

19 (Brief pause)

20 MR. ENNIS: No further questions.

21 THE COURT: Okay. Thank you.

22 Do you have any redirect on that?

23 MR. BODURTHA: Just one question.

24 THE COURT: Okay. Go ahead.

25 REDIRECT EXAMINATION

1 BY MR. BODURTHA:

2 Q. Mr. Shakoori, despite your claim that you haven't  
3 received monthly loan statements from PHH or Ocwen,  
4 certainly you received information from Ocwen which you  
5 used in order to file the 2015 bankruptcy, right?

6 A. Whatever I received, I gave my attorney.

7 Q. Okay.

8 A. I can't remember the exact date.

9 Q. All right. But fair to say -- permitting one more  
10 question -- fair to say that you had received  
11 information from Ocwen which you provided to your  
12 attorney which ended up in the bankruptcy filing,  
13 right?

14 A. On 2015?

15 Q. Yes.

16 A. That one actually I clearly remember when my  
17 attorney Christopher Lefebvre, he asked me have I  
18 received any documents and I said no. He contacted and  
19 they sent paperwork to him.

20 MR. BODURTHA: Okay. Thank you.

21 No further questions, your Honor.

22 THE COURT: All right. Thank you. I have a  
23 couple of questions.

24 You said in response to one of Mr. Bodurtha's  
25 questions, he was showing you Exhibit CC. That's the

1 2015 bankruptcy petition or Chapter 7, Individual  
2 Debtor's Statement of Intention. That's the one that  
3 says debtor will retain collateral and continue to make  
4 regular payments. Do you remember that?

5 THE WITNESS: Yes.

6 THE COURT: All right. So he asked you a  
7 question about that statement. And you said that you  
8 continued to make payments and you never got credited  
9 for them. And that's when he asked you about the  
10 source of the dispute is the amount. And you agreed it  
11 could be resolved by a proper accounting of the loan.

12 So I'm wondering, how many payments did you make  
13 that did not -- that you did not get credit for after  
14 that 2015?

15 THE WITNESS: Your Honor, that's before 2015.

16 THE COURT: So you were --

17 THE WITNESS: I was making payments from 2003  
18 through 2008. They don't have any documents. They can  
19 not show all the money that I sent to them.

20 THE COURT: Okay. So you're saying you made  
21 payments between 2003 and 2008?

22 THE WITNESS: Yes. I was making money and  
23 sending money.

24 THE COURT: All right. How many payments did  
25 you make?

1 THE WITNESS: Every month I was making payment,  
2 and I was sending extra, your Honor.

3 THE COURT: You're saying you made a payment  
4 every month and sent extra between 2003 and 2008?

5 THE WITNESS: Yes. And then after the  
6 modification, which I strongly object signing it, but  
7 as a good faith I listened to my attorney, I signed and  
8 I sent the money. And then at some point they send the  
9 checks back to my attorney. They never cashed it.  
10 Although they made the agreement and I made the \$1300  
11 interest only, they sent the checks back.

12 THE COURT: Okay. When was that?

13 THE WITNESS: I don't know the date, but there  
14 is copy of it. My attorney Charlie Wick has it.

15 THE COURT: Well, just in terms of the year,  
16 when was that? I'm just trying to get straight what  
17 you're saying.

18 So you're saying after the first bankruptcy  
19 discharge, you said you would continue to make payments  
20 in good faith and you did that?

21 THE WITNESS: The modification which was 2011, I  
22 believe.

23 THE COURT: Okay. So that's 2011. So what I'm  
24 asking you -- I'm just trying to get a general idea.  
25 You're saying that you made payments from 2003 to 2008.

1 That's five years of payments so that's 60 payments.  
2 And you say that you paid the mortgage amount plus  
3 extra. You made 60 payments of that type; is that what  
4 you're saying?

5 THE WITNESS: Correct. Also I made payment on  
6 the loan modification.

7 THE COURT: So then you're saying -- so what  
8 happened between 2008 and 2011? Did you make any  
9 payments between then?

10 THE WITNESS: There was dispute going on and,  
11 yes, I did make some payments, yes.

12 THE COURT: So you're saying you made some  
13 payments between 2008 and 2011?

14 THE WITNESS: Yes.

15 THE COURT: And then after 2011 you made more  
16 payments?

17 THE WITNESS: Until they re-send my checks back  
18 to attorney Charlie Wick. And then he told me do not  
19 send any more payments until we go to court.

20 THE COURT: Okay. Now, which checks did they  
21 send back? All of them from 2003 or just the ones  
22 after 2011?

23 THE WITNESS: After the new modification as they  
24 called it.

25 THE COURT: So what happened to the -- let's

1 start with 2003. What happened to the 60 checks that  
2 you sent them between 2003 and 2008?

3 THE WITNESS: They cashed it.

4 THE COURT: Okay. Those were cashed?

5 THE WITNESS: Right.

6 THE COURT: So you should have records of that,  
7 right?

8 THE WITNESS: I have asked them for the records.  
9 I send the check.

10 THE COURT: No, I'm asking you about your  
11 records. When you have a checking account, you write  
12 the checks and then you get the checks back from the  
13 bank. There's electronic copies of them.

14 Have you provided copies of all of those checks  
15 in the course of this litigation?

16 THE WITNESS: During this, no, not this  
17 litigation. Some of them have been destroyed in the  
18 flood.

19 THE COURT: They were destroyed in a flood?  
20 What flood?

21 THE WITNESS: Yes. We had a flood a few years  
22 back. Our basement was underwater.

23 THE COURT: Okay.

24 THE WITNESS: I live in high water table area.

25 THE COURT: So you're saying the

1 copies -- usually banks keep electronic copies of  
2 checks.

3 THE WITNESS: Correct.

4 THE COURT: Have those been produced during the  
5 course of this litigation?

6 THE WITNESS: No.

7 THE COURT: Okay. What about the payments from  
8 2008 to 2011? You should have checks -- first of all,  
9 how many such payments did you make?

10 THE WITNESS: Whatever my attorney said, your  
11 Honor. I don't know the numbers.

12 THE COURT: I'm just asking you.

13 THE WITNESS: I don't know the numbers. I did  
14 make the payments.

15 THE COURT: Did you make one or ten?

16 THE WITNESS: More than that. More than that.  
17 I don't know the exact number.

18 THE COURT: Where are the checks, the canceled  
19 checks, for those?

20 THE WITNESS: I can probably get them from the  
21 bank if they haven't destroyed it.

22 THE COURT: Those haven't been produced in this  
23 litigation?

24 THE WITNESS: No, no, sir.

25 THE COURT: All right. Then you said you made

1 more after 2011 until they sent them back to you. So  
2 you would have copies of the checks that were sent  
3 back, right?

4 THE WITNESS: That's correct.

5 THE COURT: Where are those checks?

6 THE WITNESS: I can try to get them for you.

7 THE COURT: Have you given them to your  
8 attorney?

9 THE WITNESS: My attorney has a copy of the  
10 check. Shows it was returned to attorney Charlie Wick.  
11 Mr. Ennis has that copy.

12 THE COURT: How many checks were returned?

13 THE WITNESS: I believe three.

14 THE COURT: And during what year were those  
15 returned?

16 THE WITNESS: Between 2011 or to '12. I don't  
17 know the exact date. The letter -- there is a letter  
18 to attorney saying the check has been returned. There  
19 is a date on that letter.

20 THE COURT: All right. So those are the only  
21 ones that have been returned. Apparently, you're  
22 saying 60 checks were cashed between 2003 and 2008 and  
23 then many checks, you don't know the exact number, were  
24 sent and cashed between 2008 and 2011.

25 THE WITNESS: Yes.

1           THE COURT: So this mortgage would not be  
2           320,000 unless all those checks were for interest only,  
3           which I don't think was the agreement you had with the  
4           bank. You're saying you never got credit for these  
5           checks?

6           THE WITNESS: That's correct. Western Union,  
7           your Honor, I sent cash from --

8           THE COURT: Say that again.

9           THE WITNESS: I sent cash, hundred-dollar bills  
10          went to Western Union at Stop & Shop in Richmond, Rhode  
11          Island. And I send it to Option One, okay. They don't  
12          have a record of it.

13          THE COURT: When did you do that?

14          THE WITNESS: Period of 2003 all the way to  
15          2011.

16          THE COURT: How many times did you do that?

17          THE WITNESS: Probably eight to ten times I send  
18          extra cash.

19          THE COURT: What do you mean "extra cash"?

20          THE WITNESS: I was sending extra money toward  
21          the principal.

22          THE COURT: You sent that to Option One?

23          THE WITNESS: Correct.

24          THE COURT: All right. So you should have a  
25          record of that, right?

1 THE WITNESS: There's some kind of an account I  
2 have with Western Union.

3 THE COURT: Okay.

4 THE WITNESS: I have a card with an account  
5 number. Every time I went there, I presented the card  
6 and there's a computer record in their system.

7 THE COURT: All right. And has all that been  
8 given to your attorney and produced in this litigation?

9 THE WITNESS: Negative.

10 THE COURT: And why not?

11 THE WITNESS: Sam never asked for it.

12 THE COURT: Well, I'm asking you if you provided  
13 it to your attorney?

14 THE WITNESS: No.

15 THE COURT: Did you provide all this to Mr.  
16 Ennis?

17 THE WITNESS: No, no.

18 THE COURT: Do either of you want to follow up  
19 with this?

20 MR. BODURTHA: I just have a point of  
21 clarification, your Honor, because you were discussing  
22 the payments that Mr. Shakoory made between 2008 and  
23 2011 and how there should be a credit. If you look at  
24 Exhibit Q, which was admitted in full.

25 THE COURT: I know. It says interest only.

1 MR. BODURTHA: It was interest-only payments.

2 THE COURT: I understand. I'm just trying to  
3 understand the big picture here.

4 MR. BODURTHA: I get it. I was just clarifying  
5 it. I don't have any other questions.

6 MR. ENNIS: No questions, your Honor.

7 THE COURT: All right. You can step down.

8 THE WITNESS: Thank you.

9 THE COURT: Is there any further testimony?

10 MR. BODURTHA: Not today, your Honor.

11 THE COURT: Okay. Let's go off the record.

12 (Off-the-record discussion)

13 THE COURT: Back on the record. Mr. Bodurtha,  
14 go ahead and go through the documents that you seek to  
15 admit at this point without objection.

16 MR. BODURTHA: Okay. For those documents we  
17 seek to admit as self-authenticating: Exhibit A, the  
18 December 26th, 2000, deed to Mr. Shakoori; Exhibit B,  
19 the Finance America Mortgage; Exhibit D, the Option One  
20 mortgage; Exhibit F, the Finance America mortgage  
21 discharge.

22 Now turning to bankruptcy documents. That's  
23 Exhibit N, Exhibit O, P, Exhibit S, Exhibit T, Exhibit  
24 U, Exhibit V, Exhibit W, Exhibit X, Exhibit Y, Exhibit  
25 AA, Exhibit BB, Exhibit CC, and Exhibit DD.

1 THE COURT: All right. So those are moved as  
2 self-authenticating documents.

3 Mr. Ennis, do you have any objection?

4 MR. ENNIS: The only objection I note is my  
5 initial objection about the deemed admissions which we  
6 still don't have a motion to remove those admissions.

7 THE COURT: I think those are unrelated to these  
8 documents. I'm just asking about these documents.

9 MR. ENNIS: No. In terms of the documents,  
10 self-authentication, no problem, your Honor.

11 THE COURT: All right. So all of those  
12 documents just listed by Mr. Bodurtha will be admitted  
13 in full without objection.

14 (Plaintiffs' Exhibits A, B, D, F, N, O, P, S, T,  
15 U, V, W, X, Y, AA, BB, CC, and DD were admitted  
16 in full)

17 THE COURT: All right. Now you did refer to  
18 some others, but you're saying to me that you do not  
19 intend to move those documents at this time because you  
20 are going to lay an additional foundation through the  
21 company witness; is that correct?

22 MR. BODURTHA: Actually, your Honor, I'd like to  
23 admit -- I'm sorry, I'm reviewing this. There are a  
24 lot of documents here.

25 I'd like to admit the July 16, 2003, Option One

1 closing statement as Exhibit E.

2 MR. ENNIS: No objection, your Honor.

3 THE COURT: All right. That will be full.

4 (Plaintiff's Exhibit E was admitted in full)

5 MR. BODURTHA: That's it, your Honor.

6 THE COURT: All right. Let me just ask you,  
7 since I asked Mr. Shakoori a number of questions about  
8 payments made, is that an issue that is agreed to or is  
9 that in dispute or is it just not relevant the fact  
10 that he says he made, just as an example, that he made  
11 every payment between 2003 and 2008 and that those  
12 checks were all cashed? Wouldn't that have reduced the  
13 debt amount? I realize that may all be water under the  
14 bridge and the mortgages were refinanced and so forth,  
15 but --

16 MR. BODURTHA: So is it relevant to the claim  
17 that we're pursuing? Not necessarily. Because what  
18 we're asking for is an equitable assignment of the  
19 mortgage.

20 Does it impact the extent to which there is a  
21 significant outstanding debt? Yes, it does. And I do  
22 believe, though, that the loan modification agreement  
23 speaks -- is now admitted into evidence -- it speaks  
24 for itself. And it includes a breakdown of what Mr.  
25 Shakoori owed. It resolved what he owed into a new

1 loan at 320-odd-thousand dollars. All the payments  
2 that followed that were for interest only.

3 So realistically, your Honor, the unpaid  
4 principal balance has remained \$320,000 since the 2008  
5 loan mod.

6 MR. ENNIS: Your Honor, other than equitable  
7 issues relating to availability of documents and  
8 accuracy of documents, which is another issue because  
9 they had several other documents they wanted to  
10 introduce later because it doesn't appear there's any  
11 documents in their possession from before 2000 late '7  
12 or early '8.

13 THE COURT: I don't think I understand what  
14 you're saying.

15 MR. ENNIS: I don't think it has any relevance  
16 towards their litigation in this case, the amounts or  
17 the payments.

18 THE COURT: All right. That sounds like that's  
19 correct.

20 Okay. If there's nothing further, then we'll be  
21 in recess for today. And I'll let you know what day we  
22 can recommence the trial in the week of the 18th. I  
23 just have to work out a couple of other scheduling  
24 things.

25 MR. ENNIS: Thank you, your Honor.

1 MR. BODURTHA: Thank you, your Honor.

2 THE CLERK: All rise.

3 (Time noted; 12:50 p.m.)

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1 I, Lisa Schwam, CRR-RPR-RMR, do hereby  
2 certify that the foregoing transcript is a correct  
3 transcript prepared to the best of my skill, knowledge  
4 and ability of the proceedings in the above-entitled  
5 matter.

6  
7 /S/ Lisa Schwam

8 Lisa Schwam, CRR-RPR-RMR  
9 Federal Official Reporter

Date:  
April 21, 2022

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